

7-5-58

The Gazette of India



EXTRAORDINARY PART II—Section 3—Sub-section (ii) PUBLISHED BY AUTHORITY

No. 69] NEW DELHI, MONDAY, APRIL 28, 1958/VAISAKHA 8, 1880

ELECTION COMMISSION, INDIA

New Delhi, the 19th April 1958

NOTIFICATION

S.O. 677.—Whereas the election of Shri Pratap Keshori Deo as a member of the House of the People from the Kalahandi constituency of that House has been called in question by an election petition duly presented under part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Ghanshyam Das Thirani of Brajrajnagar, District Sambalpur (Orissa State);

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provision of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF THE MEMBER, ELECTION TRIBUNAL, SAMBALPUR (ORISSA)

PRESENT:—Shri J. K. Misra, M.A., B.L., Member, Election Tribunal, Sambalpur.

ELECTION PETITION No. 471 of 1957

Dated the 28th February, 1958

Shri Ghanshyam Das Thirani—Petitioner.

Versus

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|--------------------------------|----------------|
| 1. Shri Pratap Keshori Deo. | } Respondents. |
| 2. Shri Bijoy Chandra Pradhan. | |
| 3. Shri Jogeshwar Majhi. | |
| 4. Shri Satyanarayan Jena. | |

For Petitioner:—Shri S. K. Bose, Bar-at-Law, Shri S. Mitra and Shri B. Misra, Advocates.

For Respondent No. 1:—Shri A. Das, Shri M. Bohidar, Shri K. B. Parhi, Shri K. M. Panda and Shri S. Supakar, Advocates.

JUDGMENT

The petitioner was the congress candidate for the General seat from the Kalahandi double member Parliamentary Constituency in the last General Election of 1957 and the respondent No. 1 was his successful rival from the

Ganatantra party. Respondents 2 and 3 were the respective rival Ganatantra and Congress candidates for the reserve seat and respondent No. 4 was an independent candidate for the General seat. Alleging that the respondent No. 1 was guilty of several corrupt practices of bribery, undue influence, systematic appeal to vote on ground of caste, race or community and incurring or authorising of expenditure in contravention of section 77 of the R. P. Act and also alleging certain non-compliance with the provision of the Act or rules made thereunder, the petitioner has sought for a declaration that the election of the respondent No. 1 is void and for a further declaration that he has been duly elected. The petitioner's prayer for the declaration that he has been duly elected was later on withdrawn and as such all issues framed on basis of the recriminatory petition filed by respondent No. 1 were struck off against the opposition of respondent No. 1 (*vide* order No. 59 dated 10-1-58). Some of the allegations of the petitioner against the respondent No. 1 lacked in material facts and particulars and they remained vague irrespective of several opportunities availed of by the petitioner for amendment and so those allegation were not brought into issues on the authority of A.I.R. 1955 Supreme Court page 610 (*vide* order No. 34, dated 25th October 1957). As to the other allegation of the petitioner which were considered reasonably specific the following issues were framed and I shall advert to the corresponding allegations while discussing each issue.

Issues

1. (a) Did the respondent No. 1 appeal to voters on 22-2-57 and 5-3-57 in meetings at Dahagaon and Bhawanipatna respectively to refrain from voting for the petitioner as the petitioner was a Marwari

(b) Are such appeals hit by, and do they amount to "systematic appeal" as referred in sec. 123(3) of the R.P. Act?

2. (a) Did the respondent No. 1 on 22-2-57 in meetings at Behera and Charbahal ask the voters to assault petitioner's men whenever they met them?

(b) Do such instigations of assault, in absence of any allegation about their having been actually communicated to those against whom intended or having been actually effective, amount to undue influence under sec. 123(2) of the R. P. Act?

3. (a) Whether any of the assaults referred to in para 4(d), (e) (f) and (g) took place?

(b) Whether such assault amounted to undue influence?

(c) How far the result of the election has been materially affected by such assaults?

4. (a) Did the respondent No. 1 in a meeting at Koksara on 23-2-57 instigate violence against petitioner's workers and supporters?

(b) Was the jeep car of the petitioner attacked and his men assaulted as alleged in para 1(a) of particulars?

(c) Was the said attack and assault due to the said instigation by respondent No. 1?

(d) and if not, how far the result of the election has been materially affected?

5. (a) Was there any extortion of money from petitioner's Driver as alleged in para 1(b) of particulars?

(b) Were the person involved in the said extortion workers of the respondent No. 1?

(c) Does the case amount to undue influence committed by, or committed with the consent of the respondent No. 1 because his workers committed undue influence?

(d) and if not, how far the result of the election has been materially affected?

6. (a) Did the respondent No. 1 mishandle the ballot box in booth No. 54 Purunapada on 6th March 1957?

(b). Has the result of the election been materially affected thereby?

7. (a) Did the respondent No. 1 in meetings held at Joypatra, Dharmagarh and Koksara on 24th February 1957, 19th February 1957 and 23rd February 1957 respectively instigate electors to assault petitioner's workers and do other acts of violence as alleged in para 2 of the particulars?

(b). Were the petitioner's workers or supporters actually frightened and his election work actually hampered by the said instigation?

(c). Do such instigations of violence, in absence of any allegation about their having been actually communicated to petitioner's workers and supporters amount to undue influence?

8 (a). Did the respdt No. 1 in a public meeting at Bhawanipatna on 5th March, 1957 instigate threatening the workers and supporters of the petitioner?

(b). Did Angada Ghasi assault Jamal Khan that very day at Ghasipara of Bhawanipatna?

(c). Was Angada Ghasi a worker of the respdt No. 1 and Jamal Khan a supporter of the petitioner?

(d) Was the said assault due to the said instigation by respondent No. 1?

9. (a) Was there any incident of threat resulting in breach of peace as alleged in para 5 of the particulars?

(b) Were the authors of the incident workers and agents of respondent No. 1?

9. (c) Does undue influence by workers and agent amount to undue influence by respondent or undue influence committed with his consent?

(d) and if not, how far the result of the election has been materially affected?

10. (a) Did the respondent No. 1 instigate assault on petitioner's workers as stated in para 8 and 9 of particulars?

(b) Was there any real assault committed on petitioner's workers as alleged in para 7, 8 and 9 of particulars?

(c) Were the assailants in any of those cases the agents and workers of the respdt No. 1?

(d) Were the assaults referred to in paras 8 and 9 of the particulars due to the instigations of the respondent as alleged?

(e) How far assaults materially affected the result of the election?

Findings

Issue No. 1—Petitioner's case [vide para 4(a) of the petition] is that in a public meeting addressed by respondent No. 1 (hereinafter called the respondent) on 22nd February 1957 at Dahagaon village, he asked the electors not to vote for the petitioner as he is a Marwari: that the respondent also addressed to the similar effect in a public meeting at Bhawanipatna on 5th March 1957. About the Dahagaon meeting the witnesses for the petitioner are P.Ws. 10, 13 and 17 and the witnesses on the respondent's side are R.Ws. 5 and 12 besides the respondent himself as R.W.2. P.W. 10, as admitted by him, is a kine-house keeper under the control of the Gram Panchayat of which respondent No. 3, the schedule class congress candidate for the Parliamentary Constituency, is the Surpunch and as such is a highly interested witness. Even so, what he has stated he does not say that the respondent stated in the meeting that the petitioner was a Marwari. On the contrary he goes to the extent of saying that the respondent expressed in the meeting that if the petitioner come for votes he should be assaulted which is neither the petitioner's case about Dahagaon meeting and which is not supported by the other witnesses. According to P.W. 13 the respondent said that from the congress side a Marwari named Thirani of Calcutta has stood against him and that people could never carry their grievances to him and even if they went, he could not understand their Oriya language and so he should not be voted for by anybody. P.W. 13 is one of the employees of the Orient Paper Mills at Brajarajnagar and the Orient Paper Mills took keen interest in the election of Mr. Thirani, the petitioner, by sending many—officers and vehicles to make propaganda for him, since Mr. Thirani was erstwhile the Manager of the Paper Mills and he is closely related to the Proprietors thereof. According to P.W. 13 he had been sent by the Paper Mills with an urgent letter to Mr. Thirani, then camping at Bhawanipatna, and Mr. Thirani sent him in a jeep to Dahagaon on 22nd February, 1957 to enquire about the progress of work in that area and so he happened to be present at the scene of the meeting: that after the meeting he came back to Mr. Thirani that very day and the next day he came away to his Headquarters at Brajarajnagar. So apart from being an interested witness P.W. 13 is also a chance witness. According to P.W. 13, on his return to Bhawanipatna from Dahagaon, he narrated to Mr. Thirani whatever he had heard in the meeting. According to the witness the respondent did further say in the meeting that people should not allow Mr. Thirani's men to stay in villages and they should break their vans and drive them away. Mr. Thirani, the petitioner himself, does not appear in the box to corroborate this witness; nor does he states in his peti-

tion about the alleged instigation at Dahagaon meeting of breaking his vans and driving away his workers, though the witness says that he reported the whole incident to the petitioner. The witness admits that he has not mentioned in his T.A. bills to the Paper Mills about his visiting Dahagaon on the said date. In the circumstances the testimony of P.W. 13 is unreliable. P.W. 17 was an independent candidate of the Kasipur Assembly Constituency, which was covered by the Parliamentary Constituency, who forfeited his security deposit and the respondent's suggestion is that this candidate was set up by the congress to split up the local votes against the Ganatantra party. According to P.W. 17 he went to the village Dahagaon on the alleged date of occurrence for holding an election meeting for himself and going there he heard of the respondent's meeting at that very place on that very day and so he attended the meeting. According to him the respondent said in the meeting that Mr. Thirani was a Marwari and the congress has set him as a candidate there and he could do nothing beneficial to them and so saying he asked the audience to give him votes. According to him the respondent further said in the meeting that people should not allow Mr. Thirani's men to enter their villages and should push them out. A suggestion was put to this witness that he was carrying on his election propaganda in a jeep of Mr. Thirani which he has sought to deny and according to him he was going in the jeep of one Balaram Babu, in a hired house of whose Mr. Thirani was holding his election office and the said Balaram Babu was another independent candidate for an Assembly Seat. Though he claims to have been moving in Balaram Babu's jeep and not Mr. Thirani's, he cannot give the number of that jeep of Balaram Babu nor the name of his driver. The witness admits that he spent Rs. 25 for printing of his election pamphlet which he did not show in his election expenditure. Thus he is another unreliable and a chance witness in the chain and is overzealous too in seeking to make out a case of instigation of assault on petitioner's workers by the respondent at Dahagaon meeting, which is not the petitioner's case. R.Ws. 5 and 12, who are both residents of village Dahagaon and who claim to have attended the respondent's meeting, have stated that the respondent did not say in the meeting that Mr. Thirani was a Marwari and nothing has been brought out from their cross-examination to challenge their veracity or impartiality. In the result I hold that the petitioner's allegation about Dahagaon meeting is unsubstantial.

Next coming to the incident at Bhawanipatna on 5th March, 1937, petitioner's case (*vide* paras 3 and 11 of the particulars) is that not only the respondent appealed to the people not to vote for him since the petitioner was a Marwari, but also he "instigated threatening the electors, voters and workers supporting the petitioner **** and frightened them and instigated his workers to assault the petitioner's supporters." Issues 1(a) and 8(a) refer to the incident at the said Bhawanipatna meeting, the former dealing with the question of appeal to vote on ground of community and the latter dealing with the question of undue influence. The respondent's case is that in the said meeting he did not make appeals in the manner alleged. The witnesses on the petitioner's side about the incident at Bhawanipatna meeting are P.Ws. 15, 19 and 41 and on the respondent's side are R.Ws. 4 and 6 besides the respondent himself. The P.Ws. seek to support the petitioner's case that the respondent stated in the meeting that the petitioner was a Marwari and he besides asked the audience to assault petitioner's workers. The point is how far these witnesses are reliable. P.W. 15 is an Insurance Inspector. From the account given by him of his past employments it appears that he is a man of chequered career. It is admitted by him that he booked the case of the wife of the respondent for an insurance at Rs. 50,000 and received the first premium and later on the proposal was rejected by the concerned insurance company. The respondent's suggestion is that he rebuked the witness since the first premium being received by him in time was despatched in delay. Though the witness denied the suggestion about the dilatory despatch, curiously he claims ignorant as to the reason why the proposal was not accepted by the company. Admittedly the witness was a congress worker from 1930 to 1948 and according to him he lost sympathy for the congress thereafter when there was division in its own rank, while at the same time he claims that he has no antipathy for the congress since then. He resides in a house of the father of the Vice President of the Adhoc Congress committee of the Kalahandi district and claims ignorance of the fact as to if his lessor's son occupies that position in the congress committee. In the meeting of the respondent at Bhawanipatna 4 to 5 thousand persons attended and except marking the presence of 3 congress workers whom he named, he claims that he did not mark the presence of anybody else specifically in that meeting. P.W. 19 is a pleader. Though according to all other witnesses on either side the said meeting at Bhawanipatna took place in between 10 to 12 A.M., P.W. 19 is definite that the

meeting took place at 4-30 p.m. This witness is not only a four anna member of the congress but also a member of the local Mandal congress committee and president of the town congress committee. He was also the President of Local Ad-hoc Congress committee and he had read out the address of welcome to a Deputy Minister belonging to the congress party in an election meeting held by that Minister during the last election. The witness was debarred by the University for one year for using unfair means in law Part II examination. The witness was asked as to why he did not inform the police or other authorities concerned as to the grave character of the offence, of which he was conscious, involved in the respondent's speech in that meeting and his answer is "though a congress member I was not a congress leader." * * * * To me the town congress President is not a leader. In my case I was made a President without my consent. * * * * Though I accepted the job I could not give full attention thereto as I had no time." Though his passage money had been deposited in court, the witness says "I did not feel it beyond my dignity to come in the party's vehicle, rather I requested for the vehicle and the party supplied it." While coming to Sambalpur as a witness he stayed at the guest house of the Orient Paper Mills and though he denies that he was taking his food as a guest there, it is deposed by P.W. 20, another pleader witness and his companion, that all of them were taking their meals free at the said guest house during their period of stay at Sambalpur as witnesses. According to this witness one Uchhabanand Padhan, a congress worker, met the witness on the 2nd day next after the date of the meeting to whom he narrated what was said in the meeting and the said Uchhabanand enquired from him as to if any police officer was present in the meeting; but according to the evidence of P.W. 15 and also the statement made in the election petition itself Uchhabanand was present in that meeting and so this witness's statement about Uchhabanand's query holds no water. P.W. 41 is an old and active congress worker. A suggestion was made to this witness that his wife had previously married to one Malu Naik of Midnapur, 3 miles off from his place of residence, and he eloped her away and re-married her; while denying the elopment, he claims ignorance as to if his wife previously married to Malu Naik. This witness is a dealer in rice and according to him he regularly attends every market on the market days of Tuesday and Saturday from 7 to 12 A.M. to purchase rice. The day of the meeting at Bhawanipatna was such a market day, falling as it did on a Tuesday. If the witness would have attended the market he could not possibly be present in the meeting. Without trying to explain how he missed the market which he was regularly attending, he conveniently forgets if that day was at all a market day. According to this witness while he was working for the congress party in the election, he was working for no individual candidate and he "had never any occasion to explain to people about individual candidate." As he says "people were sometimes asking me who are congress candidates and without giving names I was telling them not to bother over names but to vote for the congress. I cannot explain why I was not naming the congress candidates when asked for by the people." The above interesting statement is made by him in denial of the suggestion that he was a paid worker of the petitioner. At a later stage of his cross-examination the witness has said "people have never asked me who were congress candidates and so I had no occasion to conceal their names and I have not so stated earlier." Though he claims to be a very old and active congress worker, according to him he was working for the congress and not for any congress institution and he was not going to the congress office at Bhawanipatna—his home town—during the election time and so he did not know if the petitioner had his office there. Even he goes to the extent of saying that he did not know who were working for the petitioner during the election time and that he only met the petitioner for the first time on the last date of the polling. It was suggested to this witness that he was a polling agent of the petitioner and his reply is "I was a congress polling agent, on 6th March 1957, at Bhawanipatna. I do not know if I was Mr. Thirani's polling agent that day there. At 9 P.M. of 5th March, 1957, Gajananda Naik approached me to be polling agent for two congress candidates for the next day booth. I do not know if I was polling agent for the Assembly candidate or for the Parliamentary candidate. The polling officer told me if I was congress polling agent and on my affirmative reply I was asked by him to put my signature. He did not ask me whose polling agent I was, nor asked me anything on that account." What I have stated above about each of the witnesses is sufficient to condemn his reliability. The counter-evidence on the respondent's side comes from R.Ws. 4 and 6, apart from the respondent's. R.W. 4 is a retired postal Supervisor and R.W. 6 is a retired Assistant Conservator of Forest. They claimed to have attended the said meeting of the respondent and according to them nothing was said by the respondent as complained of. R.W. 4's evidence is sought to be assailed on the ground that he did not see any Ganatantra worker in the said meeting and he did not know who were congress and Ganatantra workers

respectively in the Bhawanipatna town. There is nothing unusual in such an apathetic attitude of a retired officer towards election. He admits that previously his son-in-law, before he joined government service about a year and a half back, was a Ganatantra worker staying at his residential house at Bhawanipatna while he was working elsewhere in government service and from this fact no inference of his interestedness in Ganatantra party is manifested. As to R.W. 6, his son is married to a niece of the Palace Controller under the respondent. He has also like R.W. 4 stated that he did not know who were the congress and Ganatantra workers in Bhawanipatna town. These are very insufficient grounds to discredit their testimonies. While both sides have examined some witnesses whom they have respectively claimed to be present at the Bhawanipatna meeting, no attempt has been made to examine the Additional District Magistrate, the Officer-in-charge of the police station and some C.I.D. police officers who are admittedly present in that meeting. The petitioner had initially issued summons to the Additional District Magistrate and later on the same was got cancelled. The explanation offered on petitioner's side is that, since as appeared from the affidavit of the District Magistrate that the A.D.M. had submitted no written report about the Bhawanipatna meeting, the petitioner did not consider it worthwhile to secure the presence of the A.D.M. Even if the A.D.M. made no report when he was personally present in the meeting, he would have been one of the best witnesses and the non-examination of any of the said officer-witnesses is a circumstance against the petitioner. Apart from that P.W. 21, the District Magistrate, has stated "A.D.M. Narayan Mahapatra attended the meeting. He gave a report about what was said in the meeting. I went through that report and I did not find anything objectionable in the speeches made, as reported by him." In view of the evidence and the circumstances stated I have no hesitation to hold that the petitioner's allegations as to what was said in Bhawanipatna meeting is completely unsubstantial.

It was urged by Mr. Das, the lawyer for the respondent, that even assuming that the respondent said that the petitioner was a Marwari, either in Dahagaon meeting or in Bhawanipatna meeting, since none of the witnesses of the petitioner has said that there was an appeal to the audience not to vote for him because he was a Marwari, that would have entail no disqualification. According to his contention calling him a Marwari was merely descriptive and unless it had been expressly said that he should not be voted for because he was a Marwari, section 123(3) R.P. Act was not attracted. In my opinion it was sufficient if the petitioner was described as a Marwari and thereby an implication was made, though not expressly, that he should not be voted for on that ground. Another contention of Mr. Das was that the word "Marwari" does not imply any community and for that he relies on the evidence of P.W. 35 who has said "there are Marwaris by caste and Marwaris by nationality; I am neither, though people call me a Marwari. Since I carry on trade people call me Marwari. People in Titlagarh side call all outsider business-men as Marwaris. Even outsider Barbers are called Marwari Barbers. Outsiders from up-country and not Bengal side are called Marwaris." "Marwari" etymologically means people of Marwar. Such people and the people in the neighbourhood gradually shifted to other parts of India as traders and people in Orissa understand that word "Marwari" to be a community of Hindu business-men coming from the western parts of India. Though the exact connotation of the word "Marwari" is not always uniformly realised, roughly it imports a community of such trading class people. The last contention of Mr. Das on this score was that even if the respondent in two meetings appealed to voters not to vote for the petitioner as he was a Marwari, it did not amount to a systematic appeal to vote on ground of community as those two meetings were only very stray cases out of the hundreds of meetings addressed by the respondent during the election campaign. Section 123(3) R.P. Act requires that such appeals must be systematic and so I would accept the said contention of Mr. Das. In the result in answer to issue No. 1 I hold that the respondent did not appeal to voters not to vote for the petitioner on the ground that he was a Marwari and that even if he did so, it did not come within the mischief of section 123(3) R.P. Act, as there was no systematic appeal.

Issue No. 2

5. This issue raises the question as to if the respondent asked the audience in the meetings at Behera and Charbahal, both on 22nd February, 1957, to assault petitioner's men whenever they met them and if such instigations of assault in absence of any allegation about their having been actually communicated to these against whom intended or having been actually effective, amount to undue influence under section 123(2) of the R.P. Act. The petitioner's allegations are contained in para. 4(b) and (c) of the petition in which it is alleged that the respondent told the audience to assault the workers and supporters of the petitioner wherever they were found. Nothing is alleged as to if any of such workers or

supporters were communicated of the said threat, nor that any of them was actually influenced by such threat. The respondent denied to have extended any such threat in course of his speeches in the said meetings. The witnesses for the petitioner are P.Ws. 8 and 9 and those for the respondent are R.Ws. 10 and 18. While petitioner's case is that the respondent instigated assault on petitioner's workers, P.W. 8 says that the respondent instigated such assault on congress workers. Though it is not stated in the petition that the respondent appealed to the audience not to vote for the petitioner in the said meeting on the ground that he is a Marwari, P.W. 8 refers to such an appeal in the meeting to have been made by the respondent. P.W. 8 was interested in the petitioner in distributing his identity cards amongst the electors and this he has admitted with great reluctance in saying "I do not know who distributed those cards. The distribution was just a day before voting. Those cards were placed in charge of the village Choukidar who distributed them to us * * * Choukidar made over those congress cards to me and so I distributed them in the village." P.W. 8 is indebted to an agnate of Hari Shankar Panda, who as deposed to by P.W. 9 and others, was an influential worker of the petitioner. It is stated by P.W. 9 that P.W. 8 asked him to be a witness for the petitioner. So P.W. 8 is a highly interested witness. As to P.W. 9, though he has denied to be a congress supporter, there is enough indication in his evidence that he was so. He too like P.W. 8 is overzealous to state that the respondent appealed to the audience not to vote for the petitioner as he was a Marwari, though that is not the petitioner's case about this meeting. While charging his usual conveyance and diet allowance as a witness, this witness has admitted that he came at the cost of Hari Shankar Panda, an active worker of the petitioner and that while staying at Sambalpur he was staying in the house of the Orient Paper Mills being fed by the said Hari Shankar Panda. When a matter was stated in a public meeting attended by several persons, better witnesses than P.Ws. 8 and 9 could have been procured to prove the incident. Coming to the evidence on respondent's side R.Ws. 10 and 18 have denied any such instigating speech made by the respondent. R.W. 10, while naming the congress workers in his locality, cannot name any of the Ganatantra workers though according to the respondent's evidence he had two workers at Charbahal named Padmalaya and Ghanashyam. According to R.W. 10, R.W. 18 was selected as the President of the Charbahal meeting at the instance of the respondent himself, whereas R.W. 18, who was admittedly the President in the meeting, has stated that he was nominated by somebody else. Though the witness has stated that one Mohan Chandra Nand, admittedly one of the respondent's workers, is not related to him, the record of right (Ex. 32) has been proved to show that Mohan Chandra is a cosharer with the witness. Though such a joint record may not be conclusive about any agnatic relation between the record holders, for what I have stated above I am not inclined to put any reliance on this witness. R.W. 18, who is admittedly a respectable man, presided over the meeting. The only defect pointed out in his evidence is that he could not say if there was a village named Behera within 3 miles from his village and that could not name who were the Ganatantra workers working in Charbahal area. Nothing has been suggested as to what could be his possible interest in denying his knowledge of the existence of Behera village. As to his not knowing the Ganatantra workers in the locality, his house was 4 miles off from Charbahal and if no workers had been seen by him visiting his village, there was nothing unusual in his ignorance. So I am inclined to believe in the evidence of R.W. 18. In any case the petitioner has failed to establish that the respondent gave any instigation to assault at Charbahal meeting.

6. As to the meeting at Behera the witnesses for the petitioner are P.Ws. 11 and 12 and those for the respondent are R.Ws. 13 and 14. P.W. 11 has stated that the respondent said that "if congress people came for propaganda they should be driven out of the village: that the Marwari was not of our country and was an outsider and did not know Oriya. If congress people would threaten us, we would not be threatened and turn them out of the village and assault them so as to go away." The aforesaid statement does not fall in a line with the petitioner's case of unconditional assault on petitioner's workers; besides it goes beyond petitioner's case in referring to appeal on communal ground in the said meeting. The witness has said that he became panicky on hearing the speech of the respondent and thought that he might be assaulted if he voted for the congress which he had so previously decided and so ultimately voted for Ganatantra (he volunteered for whom he voted). In his cross-examination he has admitted that outsiders had no means to know whom a voter was voting for; this shows the hollow-hearted statement of the witness as to how he changed his opinion. When he claims to be no worker for the congress there was evidently nothing for him to be panick-stricken. An agnatic cousin of this witness, P.W. 17, was a rival candidate of the respondent and he claims ignorance of that position. Though he says that he had decided previously to vote for the congress, he cannot name except

the respondent who else were the candidates for Assembly or the Parliament. P.W. 12 says that the respondent said that "the congress has set a Marwari candidate who did not understand and could not speak Oriya and if we voted for him we will not be benefited. * * * that if that Marwari's people would come we should not hear them and should drive them out from the village." He does not refer to any assault on petitioner's workers and according to him by the respondent's referring to a Marwari, he did not know if the respondent meant the petitioner or anybody else. He says "I do not know who is a Thirani and if he was a candidate in the election." He admits that he acted as polling agent for the congress; but says "I cannot say for which candidate I was the polling agent, whether for Thirani or anybody else." Thus the evidence on the petitioner's side stands to no scrutiny. R.Ws. 13 and 14 have claimed that they were present in the meeting and there was no such speeches by the respondent. R.W. 13 is obviously a chance witness and so no reliance might be placed on him. R.W. 14 is a man of village Behera and little has been elicited in his evidence to discredit him. In the result I hold that there was no speech in the manner alleged given by the respondent at Behera.

7. Now I come to the second part of the issue as to whether the alleged threat should have been pleaded to have been communicated and to have been effective. Section 123(2) proviso (a) clause (1) provides:—who threatens any candidate or any elector or any person in whom a candidate or an elector is interested with injury of any kind * * shall be deemed to have interfered with the free exercise of the electoral right of such candidate or elector. The above provision runs almost parallel to offence of criminal intimidation as defined in section 503 I.P.C. Mr. Das for the respondent relies on I.L.R. 15 Calcutta page 672 which lays down "It is clear that the gist of the offence, as defined in that section (503 I.P.C.), is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that before it can have any effect upon his mind it must be either made to him by the person threatening or communicated to him in some way." Mr. Das contends that the communication also must have been made during the period of election, since if the petitioner or his workers came to know of the threat after the election it could have no bearing on the result of the election. On the contrary reliance is placed on the petitioner's side on A.I.R. 1949 Madras page 233 which lays down "Whether as a matter of fact any one was actually frightened or not cannot affect the question of liability under section 503. It is the intention of the speaker that has to be considered in deciding whether what he stated comes within the mischief of section 503. Nor it is necessary for the speaker to know that any member or group of persons who are intended to be frightened by the speech, was present amongst the audience." "Threat" as commented in Gour's Penal Law, 6th Edition, page 2419 "is the declaration of an intention to inflict punishment, loss or pain on another." Such a declaration must be intended to be communicated. If no intention for communication is there, a mere declaration of an intention shall not amount to threatening. For instance, if A tells his intimate friend B that he would beat C and warns B to keep that matter secret, but B divulges A cannot be guilty of criminal intimidation. On the other hand if A declares his intention and takes steps for communication, but the communication does not reach the person intended to be threatened and the communication does not reach for reasons beyond A's control, whereas A had done everything in his power to do, A shall be guilty of attempt at intimidation. In the present case if the respondent uttered the threatening speech in an open public meeting necessarily he made a declaration of his intention, intended its communication and nothing remained under his control to stop communication and so the attempt at intimidation is complete. Undue influence is any direct or indirect interference or attempt to interfere with free exercise of electoral right and a threat of the aforesaid nature has been laid down by the legislature as to be deemed to interfere with such electoral right within the meaning of undue influence. If a candidate has done everything from his side to threaten another, but if the other man is not threatened because either for want of communication or because he has a strong nerve, the attempt at threatening is complete and such an attempt by the definition amounts to undue influence. So I would hold that even if communication and effectiveness of threat were not pleaded, the respondent's speech, if made as alleged, would have come under the mischief of section 123(2) of the R.P. Act.

Issue No. 3

8. In para 4(d) of the petition it is stated that Bhagirathi Bag and Bharat Chandra Kisan along with the other supporters of the petitioner were attacked at Bangamunda village by Tejram Jain and others (names) who were all Ganatantra

Parishad workers. There was a further allegation that the said attack was at the instigation of the respondent and that point was not brought into issue, since the method and manner of the instigation was covered by no particulars (*vide* order No. 24 dated 25th October, 1957). The respondent's case was that the alleged case of occurrence, though inside his Parliamentary Constituency area, was within the Titilagarh Assembly Constituency for which the Ganatantra Party candidate was the Maharaja of Patna, the President of Ganatantra party, and so the respondent himself never came to any part of that Constituency for doing any election work including the alleged place of occurrence and he had no connection with the alleged miscreants, apart from pleading that there was no such occurrence. The petitioner's witnesses in this connection are P. Ws. 16, 18, 22, 28, and 29. No witness has been examined on the respondent's side on this score except the respondent himself. P.W. 16 has said that several workers of Ganatantra party (whom he has named) surrounded his jeep car and threw dust while he was going on propaganda work in the car; that further a Harijan boy who was in his jeep was dragged out and thrown down and the said workers cried out to break the congress car and assault the congress workers that meanwhile a police party constituting one A.S.I., some Constables and Choukidars came towards the scene from the police station which was about one furlong off from the scene. The police asked the Ganatantra workers and supporters consisting of about 200 persons in the crowd to stop rioting and asked them to go to the P.S. with the Harijan boy. He gave a written report and the case is proceeding in court. This witness, who is admittedly an effective congress worker, was previously in the Ganatantra Parishad as its Secretary out of which he was either driven out because he was involved in a murder case as alleged on respondent's side or he went voluntarily out because of the misbehaviour of the Ganatantra M.L.As. as claimed by him. So in any case he is a strong partisan witness. He admits that he had never known the petitioner going out for any election work to Titilagarh Constituency area. P.W. 18, who comes to support the alleged incident, says that hearing a hulla he came near the congress jeep surrounded by about 200 persons. He heard the crowd saying "beat the congress people and do not leave their car". He went to the thana and informed the police. This witness does not refer to the alleged dragging out of a Harijan boy from the jeep car or the throwing of dust. The witness has admitted that he was a congress worker, though he does not admit to have been a worker of the petitioner. None of the Choukidars, the police A.S.I. and the Constables who are referred to by P.Ws. 16 and 18 have been examined, nor the Harijan boy who was the alleged victim of the dragging. P.W. 22, the Magistrate who has been examined as a witness for the petitioner, only deposes that the connected criminal case is still pending in his court. P.W. 28 is the police officer who has only stated that a F.I.R. (M.O.I.) was produced before him by P.W. 16. The contents of the F.I.R. has not been proved through either P.W. 16 or any other witness. P.W. 29 is the police officer who submitted charge-sheet in that pending case. So ultimately about the truth or otherwise of the incident one has to depend on P.Ws. 16 and 18 who are partisan witnesses and though better evidence could have been adduced since a police party came to the scene of the incident immediately, no attempt has been made in that direction. In the result I would hold that the petitioner has not been able to substantiate his allegation of assault on his workers by Ganatantra party workers at Bangamunda.

9. The allegation in para 4(e) of the petition is that Dayalal Jain, Kaliala Sahu and Ghasiram Jain who were all Ganatantra Parishad workers and supporters of the respondent attacked I. M. Bhandari, the election agent of the petitioner on 21st February, 1957 at Titilagarh. The respondent's case was that he had never carried on any propaganda work in this Titilagarh Constituency since Maharaja of Patna, the President of his party, was the Assembly candidate there and that he had never anything to do with any of the persons named above. P.Ws. 22 and 35 are the witnesses for the petitioner and none has been examined for the respondent except himself. P.W. 22 is a formal witness who refers to the connected criminal case still pending in his court. So P.W. 35 remains to be the only witness for the petitioner. P.W. 35 has stated that since his age of 14 (now he is 38) he is a congress man and he was a member of the last P.C.C. and also the new P.C.C. and that he was working for the congress candidate in the last election: that on 21st February 1957 while he was coming along with congress workers in a procession the Ganatantra party led a procession behind them. Meanwhile in front of his procession some people of the Ganatantra party collected and threw dust towards them and pelted brick-bats. It was then about 6½ p.m. about half an hour after evening. Members in his procession numbering about 20 to 30 ran away here and there. Then there was a hulla both from their front and behind to kill this witness. He concealed himself and by a side way ran straight to congress office. There at the congress office he found Basudeb Babu, Bhandari Babu amongst 4 or 5 persons. They gave him tea. Meanwhile he

heard a hulla from the Ganatantra office which was about 100 yards from the congress office that he must be killed. Some 20 to 25 persons were found coming towards congress office. The witness concealed himself inside the office. Those who were coming to assault him there could not see him and so left the place saying that they would go to his house with a view to molest his wife. He asked Basudeb Babu and Bhandari (election agent of the petitioner) to contact police. They first did not come out of fear. After sometime Bhandari and Basudeb went to the police and he came to his house. I need not much comment on the testimony of this witness, since all that he has deposed is besides the point inasmuch as he has given a long story of assault or attempted assault on him while he says nothing regarding the allegation of assault on Mr. Bhandari, the election agent of the petitioner, which was petitioner's case and the assault on the witness was not covered by the petition. I need only note that he has admitted that the respondent never visited the Titilagarh Constituency area and he has further admitted that the chances of the congress candidate in that area were too meagre for which the witness has gone to the extent of advising the election agent of the petitioner to take the services of the film actresses Suriya or Nargis to prop up petitioner's cause.

10. The allegation in para 4(f) of the petition is that on 21st February 1957 Krishnalal Ganariwala, the supporter of the Congress party, was attacked by Tatansai Banchhor and Ram Chandra Majhi and 8 to 10 others, who were all workers of the Ganatantra Parishad at Themra. The witnesses for the petitioner are P.Ws. 36 and 38, and no evidence has been adduced on the respondent's side. P.W. 36 has stated that he had been in a jeep with other persons to village Themra to make propaganda for the congress: that some of the villagers abused them and asked them to return and said if they insisted in making propaganda, they would be assaulted: that when they insisted on saying what they had to say, some of the villagers caught hold of the jeep at its bumper and raised it from the ground for about $\frac{1}{2}$ a cubit. One Chitra Bhoi, who is a man of a neighbouring village of this witness (Themra about 7 miles from his village), happened to be at the scene and he intervened asking the villagers to behave soberly. Then the witness and his companions wanted to go to the Harijan para whereupon the villagers expressed that they would put their matches to the petrol tank if so attempted. When the witness and his members got up the jeep, members from the crowd flung brick-bats which caused a lacerated injury to Nanda Kishore Varma, one of the companions of the witness. Thereupon Krishnalal Ganwarilal, another companion of the witness, made a report at the police station on their way back, about this incident. P.W. 38 is Krishnalal Ganwarilal and in the petition it is only about this witness that the assault has been mentioned and about none others and in the petition he has been claimed as a congress supporter. The evidence of P.W. 38 is to the effect that he had nothing to do with the election work of the petitioner or the congress: that taking a few days leave from the Orient Paper Mills (I have previously referred to the connection of the petitioner with the O. P. Mills), he had been to his mother's uncle's place and there he accidentally found P.W. 36 and others going on election propaganda and he just went out to see how election propaganda is made, since he had no idea of the propaganda. While describing the incident almost in the manner as P.W. 36, he has added that the villagers also threatened to set fire to Harijan Basti. It is this sight-seeing witness P. W. 38 who lodged the F.I.R. in the case and when he was questioned as to what interest he had to lodge the F.I.R., his answer is "it pleased me to keep the police informed of the incident and so I lodged the report with the police," though he has admitted that at the place of the alleged obstruction of the jeep he said nothing. The suggestion to this witness was that he was a paper Mill employee deputed to work for the petitioner and though he has denied it, there is ample indication in his evidence to support that suggestion. He has admitted that when he lodged the F.I.R. the injury alleged to have been incurred by Nanda Kishore Verma was not shown to the police at the P.S. Neither the F.I.R. has been proved to corroborate him, nor Nanda Kishore Verma, the alleged victim of the assault, has been examined, nor that Chitra Bhoi, a neighbour of P.W. 36, who is said to have interfered course of the occurrence in favour of the witnesses. If Nanda Kishore Verma was assaulted or if any of the petitioner's workers including P.W. 36 were obstructed, that is not the allegation in the petition and P.W. 38 to whom assault is ascribed in the petition as a congress supporter, was neither assaulted, nor was he a supporter of the congress, according to his own statement. So the petitioner has made out no case on this score.

11. The last incident of assault to be considered under this issue is alleged in para 4(g) of the petition. It is said to have taken place at Dadpur on 5th March, 1957 at 8 P.M. No evidence whatsoever has been led regarding this incident.

12. The next point to be considered under this issue is whether such assaults, if committed, would amount to undue influence committed with the consent of the candidate. A corrupt practice of undue influence may be committed by a candidate or his agent or any other person who threatens any candidate or any elector or any person in whom a candidate or an elector is interested with injury of any kind. So far the alleged assaults at Bangamunda, Titilagarh and Themra are concerned, petitioner's allegation is that they were made by workers of Ganatantra party. Petitioner's case is not that they were also the workers of the respondent himself. If the alleged Ganatantra Parishad workers committed any undue influence and they were not the workers or agents of the respondent himself, then the acts of undue influence could only be judged from the stand point of how far that materially affected the result of the election. On the other hand if such workers were the agents of the respondent then the question for consideration would be how far those acts of undue influence would be deemed to have been committed with the consent of the respondent. In section 123 of R.P. Act corrupt practice by 3 categories of persons is contemplated i.e., the candidate, his agent and any other person. "Agent" has been defined as an election agent, a polling agent or any person who is held to have acted as an agent in connection with the election with the consent of the candidate and this definition of "agent" also extends to section 99 and 100 of the R.P. Act. In the R.P. Act of 1951 the word "agent" was defined in section 79 as to include an election agent, a polling agent and a counting agent and any person who on the trial of an election petition or of an offence with respect to any election is held to have acted as an agent in connection with the election with the knowledge or consent of the candidate. The old definition has been amended to the effect that 'counting agents' have been excluded and persons acting only with the knowledge of the candidate but without his consent have also been excluded in the amending Act of 1956. Section 100 (2) (b) of the old Act which corresponds to section 100 (1) (b) of the new Act has also been materially amended. Under the old Act any corrupt practice specified in section 123 committed by a returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent was to make the candidate's election void. The new provision is that such a corrupt practice to make the election void would have to be committed by the candidate or his election agent or by any other person with the consent of the returned candidate or his election agent. Here for the word "agent" in the old law, "election agent" has been replaced and for the word "connivance" also the word "consent" has been substituted. It is clear that the legislature intended to exclude other agents but the election agents from the mischief of the old corresponding section 100 (2) (b). They also intended that mere connivance of the candidate would not be sufficient to make him responsible for corrupt practice by a third person and that the consent of the candidate was necessary. In view of the amended provision of section 100 (1) (b) the definition of "agent" in section 123 and its application to section 100 of the Act appears to be redundant and so also the whole provision of sub-section 2 of section 100 of the R.P. Act. It appears that while the legislature sought to repeal sub-sections 1 and 2 of the old section 100 of the R.P. Act by the present sub-section 1 they brought the old sub-section 3 as it is into the present sub-section 2 of the Act without apparently considering how the old sub-section 3 would fit in with the amendment brought in respect of the old sub-sections 1 and 2. In any case from the new definition of agency in section 123 it is clear that one must have to act as an agent with the consent of the candidate and from section 100 (1) (b) it is clear that even though a person is an agent of the candidate (excepting election agent) corrupt practice committed by him cannot automatically come under the mischief of that sub-section unless that corrupt practice has been committed by such agent with the consent of the candidate. All these I have felt necessary to advert to here since it was sought to be urged by Mr. Misra on basis of certain so called admissions of the respondent as to how Ganatantra Parishad workers were also working for him, though not expressly authorised by him, and how constructively the act of such workers would operate against the respondent himself. At one stage the respondent has said "Ganatantra Parishad had its own organisation throughout the Kalahandi district except that it was not elaborate in Khariar. I do not remember if apart from Ganatantra workers I recruited any other workers other than polling agents who worked for me." At another place he has said "about the different polling agents some of them were not paid by me is they had also been appointed as polling agents by Ganatantra Assembly candidates and might have been working free for me. In Titilagarh Constituency where I never went, Maharaja Patna appointed them (polling agents) and he forwarded the forms to me which I merely signed." At another place he has said that he was a founder-member of the Ganatantra party. At another stage he has said that volunteers of the Ganatantra Parishad were working for him at Joypatna. As to Titilagarh Constituency he has said that Maharaja of Patna

was the Assembly candidate there and that he could not deny that the persons named in the petition as Ganatantra workers there had been engaged by the Maharaja of Patna. He further said that he had no knowledge if the workers of Maharaja of Patna worked for him and to the same effect he has said regarding the workers at Bangamunda. He has further said that to Bangamunda, Themra and Titilagarh he had never gone since Maharaja of Patna was entirely in charge of that area (being covered by Maharaja of Patna's Assembly Constituency) and he (respondent) engaged no workers on those places and he did not know at all the names of the persons whom the petitioner had named in the petition as the workers of Ganatantra Parishad. The statements above referred to do not imply an admission that the Ganatantra Parishad workers at Themra, Bangamunda and Titilagarh worked with the consent of the respondent as his agents and it is not the case of the petitioner that they worked as the agents of the respondents with his consent. Far less there is any averment that the Ganatantra workers at those places committed the corrupt practices with the consent of the respondent. Mr. Misra seeks to rely on the Supreme Court decision reported in 11 E.L.R. Vol. XI part V page 448 Bhagwan Dutta Shastri Vs. Rama Ratan Gupta and others to support his contention. That case was decided on the basis of the provisions of the old R.P. Act before it was amended in 1956; besides the materials in that case were different on basis of which their Lordships held that the persons concerned in committing the corrupt practice acted with the connivance of the candidate and so that case is of no help to the petitioner in the present case.

13. The next point is, has the Ganatantra Parishad workers committed corrupt practice in the way alleged, how far that materially affected the result of the election. Nothing has been pleaded in the petition as to if the election was materially affected by their such acts and no evidence has also been led in that direction.

Issue Nos. 4 and 5.

14. The following questions have been raised in issue No. 4.—(a) Did the respondent in the meeting at Koksara on 23rd February, 1957 instigate violence against petitioner's workers and supporters? (b) Was the jeep car of the petitioner attacked and his men assaulted that very day at Depur? (c) Was the said attack and assault due to the said instigation? and (d) if not, how far the result of the election have been materially affected? Issue No. 5 raises the following questions:—(a) Was there any extortion of money on 23rd February, 1957 from petitioner's driver? (b) Were the persons involved in the said extortion workers of the respondent? (c) Does the case amount to undue influence committed by or committed with the consent of the respondent because his workers committed undue influence? (d) if not, how far the result of the election has been materially affected? I take up both the issues together since the incident referred to in issue No. 4 (b) and issue No. 5 (a), as placed in the evidence, refers to the self-same occurrence. The petitioner's allegation in para 1 of the particulars appended to his petition is that "at the instigation of the respondent in a meeting of electors addressed by him on 23rd February, 1957 at Koksara when he instigated violence against workers and supporters of the petitioner, the jeep car of the petitioner engaged in election work was attacked and petitioner's driver * * * etc. were assaulted" at Depur that very day: that on the same date and place at the instigation of the respondent as described above several persons (named) who were respondent's workers committed extortion of money from the driver of the car of the petitioner and his workers. The respondent's case was that in the meeting addressed by him at Koksara on 23rd February, 1957 he did not instigate any violence against the petitioner and that he was unaware of any assault on petitioner's jeep or on his workers at Depur and that even if there was any such mischief done by the persons named in the petition, they were not his workers. As to the meeting at Koksara the witnesses on the petitioner's side are P.Ws. 5, 6, 7, 25 and the witnesses on the respondent's side are besides the respondent, R.Ws. 9, 16 and 22. According to P.W. 5 the respondent said in the meeting that congress workers moving out in Thirani's jeep should be assaulted and the vehicle should be put to fire and their blood should be used as Tilak on the head. According to this witness the meeting started at about 4-30 P.M. He was a man of different village and he happened to arrive at the scene of the meeting on his way back from a relative's place. That relative is his wife's sister's husband and according to the witness it was the first time he happened to go to that place after 8 years of their relationship and so on a mere formal visit without any special occasion. The witness further admits that it was his first visit to village Koksara and he also admits that the route that took that day (there was another shorter route) he never traversed afterwards and had he come on the

shorter route, he would have no occasion to pass through Koksara. It is admitted by the witness that his father had been discharged from service during the regime of the respondent as the Ruler of Kalahandi. It was suggested to the witness that his maternal uncle was the Secretary of the Ad hoc congress committee of Kalahandi, of which he claims ignorance. The witness has said that he left the meeting after attending it for 15 minutes, out of fear lest there might be congress workers in the meeting, though he says that there was no congress workers in that meeting within his knowledge and he himself had nothing to do with the congress. This witness on his return also claims to have met Hari Shankar Panda, one of the prominent workers of the petitioner at Charbahal, whom he claims to have narrated the incident at the meeting and though Charbahal was not on his way back, he took unusual time to answer why he deviated his normal way to Charbahal, P.W. 6, who is also not a man of the locality of Koksara, happened to arrive at Koksara that day and his case is that he had come there with one Gajanana Naik, an Assembly congress candidate, for election propaganda. He just happened to arrive at Koksara at about 4-30 P.M. when the respondent was addressing the meeting and he claims to have remained at the scene of the meeting out of curiosity. According to him the respondent said that that day Thirani's men would move about in congress car for propaganda and that people should smash the car, assault the workers and rob them of their money. It is admitted by the witness that the said Gajanana Naik, Assembly candidate, with whom he had come, was having joint propaganda work with the petitioner and he and Gajanana Babu had no previous knowledge while coming to Koksara that the respondent was addressing the meeting. He has admitted that when he was young he was once convicted under section 379 I.P.C. He has further admitted that he is a four-anna member of the congress. He admits that what he heard in the meeting he conveyed to Gajanana Babu soon after and though Gajanana Babu was having joint propaganda with the petitioner, neither he went to the police station which was within one furlong from the scene of the meeting, to inform, nor did Gajanana Babu ask the witness to lodge an information there. P.W. 7 is a man of Koksara who claims to have been present in the meeting and according to him the meeting started at 4 P.M. As he says the respondent said in the meeting that the petitioner was a Marwari: the respondent further said that Thirani's men would move for vote during the night and untimely and if people saw them, they should break their vehicle and loot their articles and kill them. The overzealousness of this witness is indicated by the very fact that the respondent even instigated murder and that he appealed to the voters on ground of community which was neither the petitioner's case, nor is it supported by P.W.s 5. and 6. This witness, as I would indicate later, has sought to shift the time of the meeting to an earlier stage so as to make it possible for one Dambarudhar Bhairmal, claimed to be respondent's worker, to be present later on in the incident at Depur at a distance of about 17 miles from Koksara at about 7 P.M. in the night. The next eye-witness about the meeting is P.W. 25. He is a Deputy Collector who had been to Koksara on the date with the striking force. He claims to have attended the meeting from the very beginning and according to him the meeting was held at 6 P.M. After the close of the meeting he claims to have sent a radio message to the District Magistrate with copy repeated to S.P. The original of the radio message that was despatched by him has not been called for and the District Magistrate's copy and the copy of the S.P.'s messages have been admitted as Exs. 2 and 22, subject to objection on the respondent's side, for non-production and non-accounting for the original. The gist of the message in Exs. 2 and 22 is that the respondent told in the meeting to assault the agents of Thirani in case they distributed money to purchase voters. With reference to Ex. 2 the witness has said "by going through the contents of Ex. 2, I say I sent that message. * * * From the substance of the message in Ex. 2 I feel I sent such a message. I do not remember if Ex. 2 contains the exact words in which I sent the message." Independently of Ex. 2 the witness does not say anything from his own memory as to what the respondent said there. He has said "all that I am saying about the Maharaja's speech is by refreshing my memory from Ex. 2 since I do not remember the exact words said." After refreshing himself with Ex. 2 he has stated that because the Maharaja said in the meeting to assault the agents of Sri Thirani in case they distribute money to voters, he sent a wireless message to that effect to the District Magistrate. The witness has stated "regarding the breach of peace matters Maharaja said nothing else than what I have said and I do not remember if Maharaja said anything else against Mr. Thirani. If he would have said anything else objectionable and worth reporting to the D.M. I would have mentioned that in the message." He has elsewhere stated "Maharaja did not encourage any assault unless there was giving of money to purchase votes." Again he has said "I do not remember what Maharaja exactly said in Oriya about the said assault." Further he has stated "the gist of my message is in Ex. 2; but I cannot say if Ex. 2 contains my message word by word or it has been later on manufactured."

The respondent has a case of manufacture of the message contained in Ex. 2 to which I would advert while discussing issue No. 7. Whatever P.W. 25 might or might not be remembering about what was said in the meeting independently of Exs. 2 and 22 he is definite that the respondent did not encourage any assault unless there was giving of money to purchase votes. Under section 88 of the Evidence Act the court may presume that a message, forwarded from a telegraph office to the person to whom such message purports to be addressed corresponds with a message delivered for the transmission at the office from which the message purports to have been sent; but the same statutory presumption cannot be extended to a wireless message. Under section 150 of the Evidence Act a witness may, while under examination, refresh his memory by reference to any document made by himself at the time of the transaction concerning which he is questioned, or so soon afterwards that the court considers it likely that the transaction was at that time fresh in his memory. It further provides that whenever a witness may refresh his memory by reference to any document, he may with the permission of the court refer to a copy of such document provided the court is satisfied that there is sufficient reason for the non-production of the original. Section 160 of the Evidence Act provides that a witness may also testify to facts mentioned in such document as is mentioned in section 159, although he had no special recollection of the facts themselves, if he is sure that the facts were correctly recorded in the document. As the law stands a witness may refer to certain circumstance recorded in a document from his own memory independent of the document. If he does not, he may refer to a document and then may be reminded of the transaction. Even if he is not so reminded he may state that what was stated in a particular document was correct, if he is sure that they were correctly recorded in the document. In the present case, as I have indicated, the Magistrate had no independent recollection and he was not sure if Ex. 2 contained his message correctly and after going through Ex. 2 he remembers that in substance his message was as mentioned in Ex. 2. Ex. 2, which was admitted subject to objection, is not the original of the message that was delivered. The petitioner summoned the District Magistrate and the S.P. to bring the message despatched to them by the Magistrate concerned and so they brought their copy of the message received. There was no question to them (P.Ws. 21 and 39) as to what happened to the original message and normally the original message must be in the office of transmission which is, as stated by the S.P. (P.W. 39), is controlled by the S.P. Wireless at Cuttack and no attempt was made to procure the original message. In the circumstances strictly speaking while P.W. 25 proved nothing positive against the respondent, he is sure that the respondent did not encourage any assault unless there was giving of money to purchase votes and to that extent he believes the evidence of P.Ws. 5, 6 and 7. It may be noted here that the petitioner in his case gave no full particulars about the nature of the assault instigated by the respondent in the Koksara meeting and now he comes forward with one type of case through P.Ws. 5, 6, and 7 and a different type of case through P.W. 25. The first batch of witnesses do not support the Magistrate witness and latter does not support the former batch of witnesses. In view of the nature of evidence of P.Ws. 5, 6, and 7 and in view of what the Magistrate has stated I discard their evidence completely. As to the Magistrate's evidence I feel that legally his positive evidence about what was said is not technically admissible. Though the respondent in his written statement denied any instigation of assault, in his evidence and the evidence of his witnesses a case has been sought to be made out that the respondent spoke in the meeting that if Thirani's people would give money to purchase votes, they should be resisted and it has been urged that this did not amount to an instigation of assault. That is the tenure of the evidence of all the witnesses on the respondent's side, R.Ws. 2, 9, 16 and 22. All the witnesses have referred to the exact word used by the respondent in Oriya which was 'Roka' the dictionary meaning of which according to Bhasakosh is to 'prohibit' and also to 'resist.' It has been sought to be urged on the petitioner's side on the one hand that the R.Ws. are interested witnesses and do not speak the whole truth and on the other hand that they corroborate P.W. 25 inasmuch as 'Roka' implies application of physical force, if necessary. I have already noted that P.W. 25 said that he could not remember what the respondent exactly spoke in Oriya. If the word 'Roka' implies both verbal resistance and physical resistance, it is not unlikely for the Magistrate to have understood it in the sense of assault, whereas it might not have been so said with the same implication by the respondent. As to the witnesses on the respondent's side R.W. 9 is an independent witness of the locality belonging to no party as admitted by P.W. 7. The only comment against his evidence is that his first cousin is an influential member and worker of Ganatantra who presided over the meeting. R.W. 16, though a retired medical practitioner, is a retained Doctor of the

respondent and he had got some 60 acres of land free of Nazarana from the respondent; besides he is a member of the Municipality on Ganatantra ticket. He was also a polling agent of the respondent. So his evidence does not stand to reliance. The only comment advanced against R.W. 22 is that while the respondent has admitted that one Jugal Singh was canvassing for Ganatantra party, this witness, who is a co-villager of Jugal Singh, has denied that he was so canvassing for Ganatantra. If Jugal Singh would be canvassing for Ganatantra at any place outside his village, the witness might not have the necessary chance to know it. So I find no sufficient reason to discredit R.Ws. 9 and 22. If those witnesses and R.W. 2 are believed then the respondent used an expression which was equivocal and which some might understand as application of physical force and others as verbal remonstrance. When the petitioner did not allege any specific case of assault as referred to by P.W. 25, the respondent, in the sense he used the word, had no reason to make out a case in his written statement as to what he has stated and as to how it did not necessarily connote application of force. When the Magistrate does not remember the exact word used by the respondent and when the witnesses on the respondent's side are clear and when the word used is equivocal of which the respondent is entitled to the benefit of interpretation, I would hold that by saying that the agents of Thirani if they give money to purchase votes should be resisted, the respondent did not instigate assault.

15. Even if the respondent said to the effect that if Thirani's agents give money to purchase votes they should be assaulted, still then in my view the same would not amount to an undue influence. As to the said instigation amounting to threatening the workers of Mr. Thirani it was a conditional threat to those workers who would be distributing money. Distributing money to purchase vote is not a legitimate course in election. If a worker of a candidate while going out on election propaganda does anything wrong or contrary to law, it is not intended by the election law that he would be told nothing or done nothing to, since the candidate's election work would suffer. When a candidate's worker distributes money which is illegal, a candidate cannot in law claim to be interested in such a worker. It was sought to be urged by Mr. Bose that the said statement carried insinuation against Mr. Thirani's distributing money and so it would independently amount to corrupt practice under section 123(4) of the R.P. Act. There is no allegation in the petition making out a case under section 123(4) of the Act and had there been such an allegation the respondent had the right to justify under what circumstances he made the insinuation.

16. Now I shall come to the alleged incidents of assault and robbery at Depur. The witnesses for the petitioner are P.Ws. 1, 2, 3 and 40 and for the respondent is R.W. 11. The summary of the incident as sought to be placed by the P.Ws. is that the P.Ws. had gone to that village for appointing a polling agent for the petitioner. They went to the place of P.W. 3, who is the Surpunch, and P.W. 3 told them to go to a central place of the village and approach the villagers themselves, who had hostile attitude towards the congress, for selecting a polling agent for the petitioner. Leaving their jeep at the place of P.W. 3 the witnesses were going on foot towards the central place of the village when they heard a hue and cry that congress workers should be assaulted, whereupon they came back to P.W. 3's place. P.W. 3 advised them to leave the village in their jeep without making any further attempt. While they were going away in their jeep at the central place in the village the jeep was stopped by a crowd of 100 to 200 persons and the car was attacked with lathis and brick-bats. Somebody in the crowd pulled out the congress flag from the car, whereupon the driver got down and tried to snatch away the flag and at that stage the driver was thrown down and assaulted. Then the people in the crowd demanded Rs. 100/- from the witnesses as compensation on an allegation that a boy had been injured by their jeep and because money was not available in cash, Rs. 45/- was paid and P.W. 3 executed a security bond for the residual amount. It was thereupon the jeep was allowed to leave the village after the occupants were made to cry Ganatantra slogans and under threat that if it came again with congress workers it should be smashed. Though respondent's case in the written statement was that he was not aware of the incident, if any, at Depur, in the evidence stage a case has been sought to be made out that in fact the jeep of the petitioner carrying the witnesses, P.Ws. 1-3 and 40, injured a boy Gopal Ganda as a result of which compensation was in fact demanded and paid and that the same had no political character connected with the election. In the circumstances the point to be considered is whether the demand of money in the village Depur by some of the villagers and their obstructing the jeep and threatening its occupants was the result of any political bias against the petitioner's workers and in favour of the Ganatantra party or was it

really due to an accident actually caused by their jeep is against a villager. P.W. 1 in his evidence-in-chief did not at all refer to the alleged accident against the boy when the villagers demanded Rs. 100/- and while in cross-examination he admitted it, his explanation is that he forgot to refer to the same in his examination-in-chief. He has admitted in his cross-examination that a boy was produced before the jeep by the villagers and there was an injury on his head. Though otherwise stated in his examination-in-chief, he has stated in his cross-examination "except the driver whom they assaulted, they did not assault or try to assault any of the other occupants of the jeep." This is significant inasmuch as if the villagers had really any grievance against congress propagandists they would not have confined their attention to the driver alone. P.W. 2 has stated that the villagers placed a man before them who had an abrasion on the head, but that did not look to be fresh; but it has been admitted by P.W. 3 that that man had a bleeding abrasion on the head and the injury appeared to be fresh. P.W. 2 has further stated in his cross-examination "I cannot say if there had or had not been any accident." While P.W. 3 sought to support the other witnesses about animosity of the villagers against the congress in his examination-in-chief, he has admitted in his cross-examination "the villagers were neither against the congress nor Ganatantra." He has further stated that when the witnesses (P.Ws. 1, 2 and 40) returned for the first time to his place they told him that villagers were highly enraged and they would go away and they did not tell him, nor did he enquire why they were enraged and they did not tell him at that stage that the villagers were threatening to assault congress people. Truth comes out from this witness when he says "I had no previous acquaintance with Thirani's people or congress people. As a man had been injured and he should be treated I stood as surety (for payment of compensation)." Unlike other witnesses P.W. 40 states "the villagers did not charge us as having caused the accident to that boy by our jeep. Their charge was that by our very coming to that village the boy got the accident." In the F.I.R. that was lodged in the case, Ex. 18(a), there was no reference at all to the demand of Rs. 100/- by the villagers as compensation for having caused accident to the boy. P.W. 40, who lodged the F.I.R. gives an interesting explanation in saying "I wanted to make the F.I.R. about Depur incident as brief as possible, so I did not mention therein about the injured boy being produced, demand of the sum as compensation and my offering to take the boy to the hospital. I also did not refer to the slogans set up by the crowd as that was not material for the purpose of the case that I instituted." P.W. 1 has similarly admitted that he did not state in his 164 statement (in connection with the corresponding criminal case) about the slogans by the villagers. All the P.Ws. were admittedly congress workers and as such are interested witnesses. The story that the witnesses were first going on foot to the central place of the village to select a polling agent from one of the villagers, after hearing from P.W. 3 that the villagers were against the congress, seems to be absurd; if really that was the background the witnesses would have rather tried to contact individuals privately. The story of assault on the driver has also been sought to be exaggerated, since P.W. 40 admits in cross-examination that the driver had no injuries like abrasion or swelling and so his injuries were not shown to the police. The manner of assault on the jeep appears also to be exaggerated, when P.W. 40 says that a big stone struck and damaged the front glass to pieces while no such story is given by any of the other witnesses, nor stated by P.W. 40 in his F.I.R. Though the present story of the witnesses is that the driver voluntarily went out when the congress flag was taken out of the car and that he was assaulted when he wanted to snatch it away, there was no such story about the cause of assault on the driver in the F.I.R. and on the contrary in the F.I.R. the story was that the driver was pulled out of the car. In the F.I.R. there is no mention of anything to indicate that the people in the crowd sought to behave with the witnesses in the way alleged because of their animosity against the congress. A suggestion was made to R.W.11 in his cross-examination on petitioner's side that the injured boy Gopal Ganda had incurred that injury on his head 3 days before 23rd February, 1957 in jungle by his head striking against some wood; this seems to be absurd in view of the admission of P.W. 3 that the injury was fresh and was bleeding. R.W. 11 has stated that he came to the scene after hearing hue and cry in the village and he found villagers demanding compensation for the injury incurred by Gopal Ganda. According to him Rs. 45/- was paid in cash, but that no security was taken for a sum of Rs. 55/- payable on the next day. It is immaterial whether this part of the story is true or false. R.W.11 himself does not appear to be a reliable witness. According to him he had met the respondent before the election in Dasahara 1956 at Junagarh and he next met him in June 1957. This is belied by the statement of R.W.2, the respondent himself, who claims to have sent jackets through R.W.11 from Bhawanipatna for use of the volunteers. While R.W.11 claims "I had no

leanings to any particular political party", the respondent himself has admitted that the witness, though not a worker, was a supporter of the congress. R.W. 11 admits that he acted for the respondent as polling agent. According to him Meheswar Naik, R.W. 21, a worker of the respondent, requested him to be the polling agent of the respondent on 24th February, 1957 and on that day he (R.W. 11) was at village Depur throughout; on the contrary R.W. 21 has stated that on 24th February, 1957 he went to no other village except Salegnata and Subselet. In the circumstances, though I do not give any credence to the evidence of R.W. 11, for what I have stated. I take the petitioner's case of assault and robbery on political grounds to be a superimposed story and I have no doubt in my mind that the petitioner's workers were mishandled by the villagers only because they caused a jeep accident to a boy which had no bearing on the election.

17. The next point for consideration is whether the incident at Depur that evening had any connection with the instigation of the respondent at Koksara meeting that afternoon. To prove the connection it has been sought to be said by P.W. 7 that R.W. 11, who is a close relative of him, was present in the meeting at Koksara. On the other hand R.W. 11 has denied to have attended the said meeting that day. To make R.W. 11's presence probable in Koksara meeting he has timed the meeting at 4 P.M. whereas the other P.Ws. had timed it at 4-30 P.M.; but the evidence of the Magistrate P.W. 25 makes it clear that the Koksara meeting started at 6 P.M. and the evidence on the respondent's side is also to the effect that the meeting at Koksara started after sunset and a petrolmax was burning while the respondent was addressing that meeting. P.W. 20 has stated in his evidence that they reached Depur shortly after dusk and it is about half an hour after their arrival the incident of assault took place. In the F.I.R. Ex. 18(a) he has stated that they reached in between 5-30 to 6 P.M. Depur is, as stated on the petitioner's side, about 17 miles from Koksara to be covered by a jeep, if not more as stated on the respondent's side. This makes the presence of R.W. 11 in Koksara meeting improbable. Since P.W. 7 has been held otherwise not a dependable witness, I am of the view that R.W. 11 did not attend the Koksara meeting as alleged.

18. The next point for consideration is whether any of the persons involved in the incident at Depur was the worker of the respondent. In this respect the petitioner has confined his case to R.W. 11 alone. Reliance has been sought on the petitioner's side to be placed on the evidence of R.W. 2 who has said that on one occasion he had sent some jackets through R.W. 11 for use of the Gantantra volunteers, apart from the fact that R.W. 11 was his polling agent on the date of the poll on 25-2-1957 at Depur. So far as R.W. 11 was a polling agent, he was appointed as such on 24-2-1957 and so he could not be a prior worker of the respondent on that account. As to the sending of the jackets on an earlier occasion R.W. 2 has said that he entrusted him with that job since he was a Gantantra supporter. From that fact alone there can be no inference that R.W. 11 was a worker in the sense of an agent by the time of the occurrence at Depur took place. Reliance has also been sought to be placed on the certified copy of the election expenses of the respondent marked Ex. 26, subject to objection on the respondent's side. Under section 133 of the R.P. (Conduct of election and election petition) Rules 1956 any person is entitled on payment of certain prescribed fee to inspect and obtain attested copies of the election expenses of any candidate. If the return of election expenses be a public document then certified copies thereof are admissible under law without calling for the original. Under section 74(2) of the Evidence Act, public records kept in British India of private documents are also public documents. This clause refers to documents like official copies of registered sale deeds that are maintained under the Registration Act. A plaint filed in a court and though forming a part of the record of the court does not become a public document. Section 76 of the Evidence Act only prescribes that every public officer having the custody of a public document, which any person have a right to inspect, shall give the same person on demand a copy of it on payment of legal fees. This section does not postulate the reverse theory that whenever somebody is entitled to inspect a document or get a copy thereof, the document becomes a public document. So I accept the respondent's contention that Ex. 26 is not admissible as evidence without the original being called for. So I hold that there is no evidence on the petitioner's side that R.W. 11 was a worker of the respondent when the incident at Depur took place.

19 The next point is that even if R.W. 11 was a worker of the respondent whether the alleged extortion or robbery can be said to have been committed with the consent of the respondent. In this respect I have stated my view as

to the legal position while discussing issue No. 3 that even if an agent of a candidate (barring the election agent) committed a corrupt practice, that could not be necessarily held to have been done with the consent of the candidate and the consent must be established.

20. The next point is how far the result of the election has been materially affected assuming that the incident of assault at Depur was an act of undue influence. It has been stated in the petition that as a result of the said incident all election work of the petitioner in the said area had to be stopped and the electors were frightened. No evidence has been adduced as to what extent the electors were frightened. No doubt it appears from the evidence of R.W. 11 that at Depur booth where the polls were taken on 25-2-57 (the alleged date of assault was 23-2-57) there was no polling agent for the petitioner. The said booth, as stated by him, covered about six neighbouring villages. What was the nature of the polling in that booth has not been indicated in evidence. It is for the petitioner to make out a positive case that the result of the election had in fact been materially affected and no such case has actually been made out.

Issue No. 6.

21. The question raised in this issue is if the respondent mishandled the ballot box in booth No. 54, Puranapada, on 6-3-57 and if the result of the election has been materially affected thereto. The allegation is referred to in para 8(a) of the petition, where it is stated that the respondent peeled of a symbol of one of the ballot boxes between 11 A.M. to 1 P.M. Nothing is stated in the petition as to how it materially affected the result of the election. The only witness examined on this score on the petitioner's side is P.W. 23. He has said that the respondent removed the symbol from his own box upon which he, as the Presiding Officer of the booth, made the report Ex. 6 to the authorities concerned. In his cross-examination he has admitted that the said ballot box referred to the Assembly Constituency and not the Parliament Constituency. It may be incidentally noted that the respondent, apart from his being a candidate for the Parliamentary Constituency, was also a candidate for the Assembly Constituency. As to how the polling took place, he says that the respondent went inside the booth compartment with the witness and agents of other candidates and the respondent complained to him there, inside the compartment, that the polling was going on without symbol on the respondent's box. At that stage the respondent pointed out that the symbol on his ballot box had been deflected from one corner of the top and the upper portion of it was partly hanging. The Presiding Officer thereupon told the respondent that it had been slightly deflected and he would replace it again, whereupon the respondent telling him that it was as good as it was gone, pulled it away. He has further stated in cross-examination that the symbol was half deflected and he could not remember what percentage of the symbol was visible. The witness has further stated that the whole course of the respondent's action was not to gain any undue advantage but just as a protest against the conduct of the Presiding Officer. The witness has again stated in cross-examination "I cannot say if he (respondent) intentionally removed it (the symbol) or it fell down by his touch due to pasting with insufficient gum." For what has been stated above it is clear that the respondent had sought to take no undue advantage and whatever he might have done since it was not in respect of the parliamentary Constituency, the petitioner could have no legal grievance against him; neither the petitioner has indicated how the result of the election was materially affected by the aforesaid conduct of the respondent.

Issue No. 7.

22. This issue relates to the meeting held at Joypatna, Dharamgarh and Koksara on 24-2-57, 19-2-57 and 23-2-57 respectively in which it is alleged (*vide* para. 2 of the particulars of the election petition) that the respondent instigated electors to assault petitioner's workers and to do other acts of violence. The main point for consideration is if such instigations were true and the subsidiary points that have been raised are if the petitioner's workers were actually frightened and his election work hampered as a result of that instigation and whether in absence of any pleading about their having been actually communicated to the petitioner's workers and supporters, do such instigations amount to undue influence. About Koksara meeting the same has been dealt in issue No. 4 and Koksara part of issue No. 7 is a mere duplication of issue No. 4 arising out of the irregular way in which the election petition and the particulars thereto were filed by the petitioner. So under this issue I would confine myself only to the meetings at Dharamgarh and Joypatna which took place on 19-2-57 and 24-2-57 respectively.

23. As to the Dharamgarh meeting the petitioner's case is that the respondent instigated the electors in a group meeting "to assault the congress workers, damage their jeeps and snatch away their money and assured them that he would help them to the last in case they are impleaded in criminal cases." The witnesses on the petitioner's side about this meeting are P.Ws. 20 and 37 and the witnesses on the respondent's side are R.Ws. 8 and 15. P.W. 20 is a local pleader. According to him he attended the election meeting convened by the respondent and the respondent said in that meeting that the petitioner was a Marwari and people should not vote for him; that whenever people would find petitioner's men or congress men, they should be assaulted and Thirani's jeep wherever seen would be broken and Thirani's workers and congress workers should be turned out from villages and he was there for many consequences on that account. It may be noted that in the election petition what is alleged is that the respondent instigated the electors to assault congress workers and damage congress jeeps and no particular mention has been made about petitioner's workers and jeeps, though congress workers might cover all workers of the petitioner and other candidates for the congress standing both for the Parliament and the Assembly. Besides in the petition the meeting has been stated as a group meeting and not a public meeting, which distinction is maintained in the very allegation made in para. 2 of the particulars to the election petition; besides in the petition there is no reference to the respondent's appealing not to vote on ground of community. But according to P.W. 20 the respondent instigated assault not only against congress workers generally but also against petitioner's workers particularly and he instigated destruction of petitioner's jeeps; besides he refers to the said meeting not to be a group meeting but a public meeting inasmuch as had that been a group meeting the witness had no place there as he was not admittedly in the Ganatantra camp. He has also said that the respondent appealed not to vote for the petitioner on grounds of community. This witness is a renegade from the Socialist party joining the congress just before the election. He is a member of the Mandal Congress committee and was a propagandist for the congress. Though he claims that he was interested in the success of the congress and not in the success of any particular congress candidate, he has said that he felt for the failure of the petitioner as also the failure of the congress on that account. As a pleader he says he was not having daily cases and he was not attending court on those days in which he had no cases and the date on which the respondent convened the meeting though a court day, was a no-work day for him which could enable him to attend the meeting. Though he claims that he had by the date of the meeting been well acquainted with the election manifesto of the Ganatantra party and the promise they were making to people, his eagerness to attend the respondent's meeting that day was to hear what a big man and a previous Ruler like the respondent would say. He claims previous acquaintance with the respondent and he claims that he realised that the speech given by the respondent offended the election law; but as he says, "I had no sympathetic or antipathetic relation with the Maharaja and so I did not tell him about the impropriety of his speech." While claiming to be a congress worker and completely dissociating from the petitioner he says "some Dharamgarh persons were working for Thirani; but I cannot name them, I did not know any of the names of Thirani's workers of Dharamgarh then or now. I cannot say if Thirani's workers were congress men or not. No congress men worked for Thirani to my knowledge, though they worked for congress. The congress workers were making propaganda for congress members, but they were saying nothing for Thirani. Certainly they were appealing to people to put vote in ballot boxes having the sign of a pair of bullocks." The aforesaid reply indicates that the witness is not even prepared to touch the petitioner's name with a pair of tongs. The witness has admitted at another place "now I am staying at the forest centre of Orient Paper Mills. Jeep put me there. I am staying as a guest there. I do not know who pays for me. Paper Mills have made messing arrangement there and we take our food * * I do not try to understand why Orient Paper Mills brought us in their jeep and treated us as guests. It has never struck me that by such entertainment Thirani seeks to influence us. If I am charged I would pay for my bill and not otherwise." P.W. 20 has said that the S.I. of the local P.S. Ganapati Misra, was present in the said meeting of the respondent. The said S.I. has been examined as R.W. 1 and he has stated that from 10-2-57 he made over charge of Dharamgarh P.S. as he had to go to Headquarters on election duty and the said witness has not been sought to be contradicted on that account, nor it has been put to him that he attended the respondent's meeting on 19-2-1957. This pleader witness, for what I have observed above, can command little credence. P.W. 37 is an employee of the Orient Paper Mills; but unlike several other employees of the Paper Mills who had been deputed to work for the petitioner during election, he claims to have worked for the petitioner in a different roll. According to him he had leaning towards the congress and he took two months' leave from the Paper Mills, at the suggestion of some of his friends, to work for the congress

in election and since some of his friends in the Paper Mills had been deputed to work for the petitioner in Kalahandi district, he himself chose Kalahandi as his venue of work. Astounding it is to hear from him "I did not know then—when I went for election work—if there was a congress candidate for Brajarajnagar area (the place where the Paper Mills have their Headquarters)." Though the witness claims that he went for his love for congress and not for Mr. Thirani, the petitioner, he admits, however, that he took Rs. 100 from the election agent of the petitioner for his expenses and he also went in the jeep of the said election agent. This witness also says that the respondent said in the meeting that the petitioner was a Marwari, that his workers should be beaten and should not be given water in any village they visited and the respondent was there if they were confronted with any difficulty on that account. He further says that the wife of the respondent, who was his election agent, also instigated the people in the meeting to assault Thirani's men. These are all statements far ahead of the allegations in the election petition. According to him he reported the incident to Mr. Bhandari, the election agent of the petitioner, the next day and Mr. Bhandari has not chosen to appear in the witness box. The witness admits "I knew that not only I had to make propaganda for the congress but also to resist any illegal propaganda made by the rival party", but inspite of such knowledge he did not put that matter in writing to anybody either the petitioner or his election agent, nor did he talk the matter to the local police officer with whom he was meeting frequently. This witness has said that he was staying at Dharamgarh in a house which had been hired by Hota Babu, an employee of the Orient Paper Mills and working for the petitioner and there he was messing with Hota Babu, one Udaya Nath Das and a driver with a jeep. To avoid disclosing that the jeep belonged to Paper Mills he says he never "enquired whether that jeep was of Hota Babu or of Paper Mills or anybody else. Hota Babu is a Clerk or something in the Store department (of the Paper Mills); he is a Clerk. Hota Babu had never a jeep of his own at Brajarajnagar." Even he goes to the extent of saying "I am never asked Hota Babu if he was on deputation there by Paper Mills or he was on leave like me working out voluntarily for the congress. According to the statement of this witness he was daily going out to the interior at about 8 to 9 in the morning and was returning back between noon to 4 P.M.; but on the date of the meeting he did not go out as he wanted to attend the respondent's meeting which took place between 11 to 12 noon and since he had never heard the respondent previously, curiosity detained him. Thus P.W. 37 is another interested overzealous and evasive witness. Coming to the witnesses on the respondent's side R.W. 8 is a pleader's clerk and R.W. 15 is a pleader. The two witnesses have sought to say that there was no such instigating speech given by the respondent at Dharamgarh meeting. As to R.W. 8 he admits that he was a polling agent of the respondent and though he does not admit so, the respondent in his statement has admitted that he was also a worker of the respondent. So I put no reliance on the evidence of this witness. R.W. 15 is an influential member of the Praja Socialist party. He has admitted that after the last general election the Ganatantra party attempted to form ministry and his party decided to support Ganatantra party in so forming the ministry in opposition to congress. He claims to have supported an independent candidate in the last general election against both the congress and Ganatantra and it is why he claims to have taken interest in attending the respondent's meeting so that he would refute him or his line of action while canvassing for the independent candidate. It was high time by the date of the Dharamgarh meeting for the respective parties to know the line of action and the propaganda of other parties and what R.W. 15 claims to have attracted him to the respondent's meeting does not appear to be a convincing ground. This witness is a pleader in defence of some of the criminal cases that have been started for the alleged assaults referred to in the election petition, and though the respondent is not an accused in any of those cases, the petitioner's suggestion that this lawyer witness is financed by the respondent in those cases—though denied by the witness—may not be an unfounded suggestion. The uncle of this witness is the Chief Mining Officer of the Government of Orissa and he claims ignorance of the suggestion that the said uncle of his got his mining training with monetary help from the respondent. His father was serving in the Civil Supply Department, before merger, in Kalahandi State under the respondent and continued to serve after the merger for a year or two. This witness claims ignorance of the suggestion that after merger departmental enquiry has been started against his father for criminal misappropriation. Though the respondent has admitted that Hari Shankar Naik is a Ganatantra worker, this witness has denied that fact. For what I have observed regarding this witness I cannot accept him to be a reliable witness. The resulting position is that the evidence on either side about the questionable speech of the respondent at Dharamgarh meeting is rejected and so I hold that the petitioner has failed to substantiate this part of his allegation.

24. Now I come to the meeting at Joypatna addressed on 24th February, 1957. The petitioner's case in the petition (*vide* para 2 of the particulars) is that the respondent personally instigated the electors, who constituted the audience, to use violence and attack the petitioner's workers and electors with lathis. It is further stated that as a result of such violent speech of the respondent in this meeting and in the previous meetings at Koksara and Dharmagarh, Joyram, Baidya, Kartika, Rout and Chaitan Panda, amongst other workers of the petitioner, and Hara Krishna Jena, Suresh Chandra Barpanda and Basudeb Nanda, supporters of the petitioner, were frightened. The respondent, while admitting to have addressed an election meeting at Joypatna on the alleged date, has denied the instigation of assault. The witnesses on the petitioner's side are P.Ws. 4, 21, 26, 31, 32 and 39 of whom P.Ws. 4 and 26 claim to be the eye-witnesses and the others have been examined for corroboration. The witnesses on the respondent's side, besides the respondent himself (R.W. 2) are R.Ws. 1 and 19, P.W. 4 is a man of that village. He was not only a congress worker in the election, but he is a member of the *Ad hoc* district congress committee of Kalahandi and previously he was a regular member thereof. He has admitted that he was getting Rs. 5 every market day from Basudeb Nanda, a worker of the petitioner. As he says the meeting commenced at 3½ to 4 P.M. and lasted for two hours till evening and about 400 to 500 persons attended the meeting: that in course of the speech the respondent said the Thirani's people would run that night in every village in that area as the next day was the date of the poll and he asked the people present in the meeting to assault Thirani's people wherever they were found. Since the witness was a congress worker, out of fear, without openly attending the meeting he kept himself concealed within a room in a neighbouring building and was hearing the speech and his fear to openly attend the meeting was due to his having been prosecuted by the Ganatantra party for offences under section 325/109 and 406 I.P.C., of which he had been acquitted by that time and also because he had by that time heard some incidents of assault by Ganatantra workers on congress workers at other places. Like him Mahadeb Panda, Khedi Prasanna Najhi, Abdul Satar Khan and Suresh Chandra Panda, who were congress workers, were also present with him concealing in that room and hearing the speech in the meeting: that the next morning he filed a written report under his signature at the Joypatna P.S. None of his co-workers, who are said to be present with within the room and hearing the speech in the meeting, has been examined and it is a coincidence that those co-workers who happened to be present with him that day, two were his co-accused convicted in a previous case. It is somewhat unusual that while polls were to be taken the next day and so that day was the last day for any propaganda, the congress workers named by him without making their last effort for propaganda would be stating back to hear the speech of the respondent as if anticipating that something illegal would be said. It is admitted by him that no outsiders marked the presence of himself and his companions there. The Joypatna police station was about half a furlong's distance from the place of the meeting and as stated by P.W. 4 some constables at the local P. S. and a C.I.D. Officer from Bhawanipatna were present in that meeting and they were taking down note. None of such persons have been summoned to depose what took place in the meeting. P.W. 4 has also named two of the teachers of the local Government minor school who were present in the meeting and none of them has been sought to be examined for the petitioner. The witness has said that in that room of their concealment he and his co-workers decided in their discussion to lodge information at the P.S. the next morning and his explanation for making no immediate report is "since the incident was true we thought that delay in going to P.S. would not matter". though he has stated at another place "it was our duty to hear and see the meeting of the opposite party so that we might protest against what they may do or say". As he says, the report was prepared the next morning. According to him "Basudeb Nanda, who was a servant or helper of Thirani, was not there. The next morning he came. We told him of the incident and then the report was written. The report was written at that very house next morning * * * it was written in my presence. I do not remember who wrote it. The scribe was asked to write a report on the previous day's incident and what he wrote was found correct and approved by all." It is another curious fact that while the witness and his co-workers had not paid any serious attention to draw an immediate report, the next morning all of them detained themselves from work for writing the report when their presence elsewhere on the polling day was important. The said report of P.W. 4 and his co-workers is said by P.W. 31 the officer in charge of Joypatna Police station, to be missing from the P.S. and so could not be produced though called for by the petitioner. The defence suggestion is that Basudeb Nanda, an important worker of the petitioner came from Bhawanipatna, the Headquarters of Mr. Thirani, to Joypatna in the morning of 25th February 1957 and got the report prepared and signed by the witness, P.W. 4, and his co-workers. The sug-

gestion on the respondent's side is that Mr. Thirani was kith and kin with the then District Magistrate of Kalahandi, P.W. 21 and also the Sub-divisional Magistrate at Bhawanipatna, P.W. 26, and to help Mr. Thirani in the election certain documents were manufactured and an illegal warning, Ext. 1, was issued by the District Magistrate against the respondent in the night of 24th February, 1957 at Bhawanipatna and in furtherance of that plot Basudeb Nanda was deputed the next early morning to get a false report prepared and filed by P.W. 4 and others. This Basudeb Nanda was often present in court during the trial of the case and it is strange that the petitioner did not take any step to get him examined, though there is definite suggestion to P.W. 4 that he got the signatures of P.W. 4 and others to the report and he got the writing of the report done elsewhere. The suggestion on the respondent's side is that had that report been produced it would have disclosed as to who the author thereof was and to conceal the same the police officer, who had been called for to produce the same, has been very likely influenced to say that it is missing. It may be pertinent to note in this connection that P.W. 4 has stated that he could not say who the scribe was of the report. Reliance has been sought to be placed on the petitioner's side on Ext. 14, the station diary entry No. 290 dated 25th February 1957 of Joypatna P.S. to corroborate P.W. 4 as to his statement regarding what was said in the meeting. If the original report was missing secondary evidence could be no doubt given; but Ext. 1 does not fulfil the test of section 63 of the Evidence Act inasmuch as it does not purport to be a copy from the original and it records only the substance of what was contained in the alleged report. Ext. 3 is another station diary entry No. 281 of 24th February 1957 of the said police station which is said to have been made at the instance of one Khageswar Naik. This was admitted in evidence subject to an assurance that the informant would be examined as a witness who was not later on examined. No doubt summons were taken to this witness and it was endorsed on the back of the summons that he was ill: still then steps could have been taken to examine him on commission. Such a station diary entry could only be used as a piece of corroborative evidence and so stands to no value.

25. Now coming to P.W. 25, he is a Sub-divisional Magistrate and so undoubtedly he is a man of status. According to his evidence, since the next date was the date of poll, he was out on tour to see if polling arrangements at different places were complete. He came to Joypatna in course of that tour at about 4 P.M. By that time the respondent had been already addressing the meeting. The witness stayed there till the end of the meeting. After the meeting he went to the neighbouring police station. From the police station he despatched a wireless message to the District Magistrate about the offensive speech made by the respondent in the meeting. He left Joypatna at about 6-30 P.M. and reached Bhawanipatna, the headquarters of Kalahandi, by about 9 P.M. After his arrival he prepared and despatched a full fledged report to the District Magistrate about what had been said in the meeting by the respondent. Soon after receiving his report the District Magistrate called him by about 10 P.M. The District Magistrate discussed with him over his wireless message and report and then issued a warning to the respondent as contained in Ext. 1 by about mid-night, whereafter he left the District Magistrate's place. Copy of the message sent by him and received by the District Magistrate is Ext. 3 and another copy of that message repeated to S.P. is Ext. 23, and these two documents have been admitted subject to objection on the respondent's side, since the original was not called for or accounted for. The original of the message was certainly the one placed at Joypatna P.S. for transmission. As I have indicated in cases of Exts. 2 and 22 while discussing issue Nos 4 and 5, the petitioner did not call for the original of the message from Joypatna P.S., and he summoned the District Magistrate and the S.P. to produce the message despatched by the Sub-divisional Magistrate as a result of which they each produced the copy of the message received by him and none of them was asked for as to why the original was not produced and as the S.P. has deposited the original of the message lodged at Joypatna was under the control of the S.P. Wireless, Cuttack. The suggestion on the respondent's side is that as a matter of fact there was no such despatch of wireless message at Joypatna P.S. on the date of the meeting by P.W. 26 and that P.W. 26 did not actually go to Joypatna that day and that Exts. 3 and 23 were fabricated at the headquarters of Bhawanipatna, either after issue of the warning, Ext. 1, to justify such an issue, or just before the issue of the same. It has been further suggested in this connection on respondent's side that Dr. Mahatab, the Chief Minister of Orissa, belonging to the congress party, happened to be present at the Headquarters of Bhawanipatna in course of his election campaign in the afternoon and night of 24th February, 1957 and that it was not unlikely that to please him the Dist. Magistrate and the Sub-divisional Magistrate jointly fabricated a story of instigation and assault at Joypatna meeting to support which the wireless message was

brought into existence without any having been really despatched from the transmitting centre. That Dr. Mahafab happened to be present on 24th February, 1957 at Bhawanipatna is made out in the evidence of P.W. 2, 4 and 6 and their evidence on that score goes unchallenged in cross-examination. While on the one hand such an inference on the respondent's side is only speculative and imaginary, and it is easy to impeach official witnesses on such a theory, on the other hand when elections are run by party in power, apprehensions that officers might do certain things to please such party in power cannot be said to be an unreasonable one. Without roaming in imagination, the duty of a Tribunal in such a case is to put the evidence actually before it to the strictest scrutiny and then come to a conclusion on whatever stands the test. Exts. 3 and 23 refer to the same message and both are pencil copies. As deposed by P.W. 39, the S.P., when the same message is despatched to several persons at the same receiving stations, one pencil copy is prepared of the message, with as many carbon copies as the number of persons addressed and one of the prepared copy is retained in the receiving station and the rest despatched, one to each of the addressees. He has further stated that in exceptional cases when the receiver forgets to prepare as many carbon copies as are necessary, he might subsequently prepare pencil copies. In the present case the usual method has not been followed and the receiving officer could have explained under what circumstances he followed the exceptional method, if any. Again Exts. 3 and 23 appear on their face, to be in different handwriting and even if the receiver of the message, prepared them at different times, it remains unexplained how the handwriting could be so markedly different. The next defect about the message is that in Ext. 3—vide 3(a)—the District Magistrate has put the date of receipt as 23rd February, 1957 though the date of receipt could not be earlier to 24th February, 1957 which purports to be the date of despatch and the same has not been sought to be explained through the witness concerned. On the other hand as about Ext. 23, the S.P. has not taken the responsibility of directly receiving the wireless message and as it appears from the endorsement therein some of his subordinate officer received it on his behalf on the ground that the S.P. was absent from the headquarters at the time it arrived, whereas the S.P. (P.W. 39) is definite in his evidence that he was not absent from his headquarters on the date. The next defect about Ext. 3 is that as per Ext. 3(b) P.W. 26, the Sub-divisional Magistrate, has put his signature to Ext. 3 and why his signature to the District Magistrate's copy of the message was taken is a suspicious circumstance. The District Magistrate (P.W. 21) has himself stated "I cannot say when he (the Sub-divisional Magistrate) put his signature in Ext. 3. I do not know if he had any business to put his signature to the copy of the radio message despatched to me. I can give no explanation as to how in my office copy my signature and Sub-divisional Magistrate's signature came together." On the contrary P.W. 26 has stated "the District Magistrate told me that the copy of the message Ext. 3 was without my signature and so I should put my signature. Wireless messages do not need the signature of the transmitter. I cannot explain why the District Magistrate asked me to sign in Ext. 3. I did not ask the District Magistrate why my signature was necessary. In good faith I put my signature in Ext. 3." The suggestion on the respondent's side is that either because the document was being fabricated and the Sub-divisional Magistrate might disown his connection with it later on, he was sought to be pinned down with his signature taken to Ext. 3 or that Ext. 3 had been intended to be despatched to the transmitting station to serve as the original which however was later on not seriously pursued by the half-hearted officials who prepared those documents. It may be noted that according to the evidence of P.W. 26, after his arrival at Headquarters he submitted a written report giving full details of facts to the District Magistrate. If that was true, the District Magistrate could not have possibly asked the Sub-divisional Magistrate to put his signature to his copy of the message since the District Magistrate had then been armed with a fuller written report from the Sub-divisional Magistrate. Apart from the aforesaid suspicious defects in Ext. 3 and 23 it is a fact that the witnesses concerned with the said wireless message, i.e., the District Magistrate, the Sub-Divisional Magistrate and the S.P., were party to a discussion in the night of 24th February, 1957 regarding the conduct of the respondent in the election and as a result of that deliberation a warning was issued in Ext. 1 by the District Magistrate, P.W. 21, to the respondent which warning he had no authority and justification under law to issue and which warning was likely to impair the respondent's position before the illiterate electors. As stated by P.W. 26 this warning eventually got published in Oriya papers during the election. Though the Sub-divisional Magistrate and the S.P. do not have any responsibility for the issue of the warning by the District Magistrate, the Sub-divisional Magistrate has said at one place "then there was a discussion amongst all of us, then the District Magistrate decided to send a warning" and he has stated at another place "The S.P. and the A.D.M. were

taking part in the discussion about the warning though I did not take any part in the discussion". The order was also shown to the S.P. and the Sub-divisional Magistrate before they left the place of the District Magistrate and admittedly none of them stated that such an order would be without the jurisdiction of the District Magistrate and might impair the respondent's cause in the election. It may be further noted that after receiving the warning the respondent hastened to ask the District Magistrate as to on what materials he had issued the warning to him and the District Magistrate did not give him any reply and his explanation is "I am not expected to give the reply to each letter I received". If a warning was issued, whether legally or illegally, to the respondent and he wanted to know the materials and there was no apparent secrecy about them, since they had been based on public speeches made by the respondent, there was no apparent justification in the lukewarm attitude taken by the District Magistrate. Now coming to the individual officers, to justify the position that the wireless message was despatched about the respondent's speech by the Sub-divisional Magistrate in due course, the District Magistrate says in his evidence "I had asked the Magistrates as a part of my general instructions to report what happened in meetings by wireless message or otherwise, but such a case is not borne out either by the Magistrates P.W. 26 and P.W. 25. Long before the impeached wireless messages were brought into evidence the respondent had made out a story in his recriminatory petition that the petitioner used to meet the District Magistrate, Kalahandi off and on and that at the petitioner's instance the District Magistrate, Kalahandi sent a defamatory letter to the respondent calling it to be a warning—meaning Ext. 1. Though the recriminatory petition was not brought to trial, the issue of the said warning came under consideration as a part of petitioner's case and in that position the petitioner himself was a material witness to deny his intimate connection with and his influencing the District Magistrate as against the respondent. It has been observed in A.I.R. 1927 Privy Council 230 "the true object to be achieved by a court of justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicion attaching to it. The story can then be subjected in all its particulars to cross-examination." It has been also observed by the Bombay High Court in 1922 Bombay page 81 "if the defendant does not choose to go into the witness box on his own behalf *** the Court is entitled to consider that as a point against the defendant ** Unless he gives evidence on his own behalf so as to give the other an opportunity of cross-examining him, then the court is entitled to infer everything against him." The District Magistrate has stated in his evidence "Mr. Thirani had on occasions met me after nominations had been accepted and before polls were completed. I cannot say on how many such occasions he met me and I do not remember for what purpose he met me on those occasions. He was meeting me in my residential office. I cannot say at what hours he was meeting me. I do not remember if he met me on the 23rd and 24th February, 1957." While the District Magistrate was so uncertain about on what dates he had or had not met the petitioner, when he was asked if the petitioner was present when he issued the warning, he declined and then he says "now I remember that he did not meet me on 24th February, 1957. He did not meet me on 23rd February, 1957." The District Magistrate has said in his evidence "except warning the Maharaja (respondent) and issuing those instruction (warning) I took no other punitive or preventing action in respect of the report I received about Joypalna meeting. To instigate violence in open meeting is a serious offence. I did not consider it my duty to get the matter investigated and bring the offender to trial." At another stage he has said "I asked the S.P. to cause an enquiry as to if what was reported in Ext. 3 had been actually said or not". And this statement of the District Magistrate while not compatible with his statement at former place that he took no other steps, is also not otherwise comprehensible; if in fact he had got a report from the Sub-divisional Magistrate himself that the latter was present in the meeting and had heard instigation of assault being made by the respondent there could be no point in so asking the S.P. Neither the S.P. supports the District Magistrate that he was asked by the District Magistrate to make such an enquiry. Before I deal with the evidence of the Sub-divisional Magistrate (P.W. 26) I shall briefly dispose of the evidence of the S.P. (P.W. 39). Incidentally I may mention that if Exts. 3 and 23 were manufactured, obviously the S.P. had taken no responsibility for them, since it was not he who received the copy of the message straight and he got it from some of his subordinate officer who had already received it. This witness's relation with the respondent may be eloquent from the following statement of the witness, "I do not remember if Maharaja of Kalahandi was behind the S.R.C. movement at Kalahandi. I do not remember if I reported against him to the Government to that effect. I know that the sentry that was posted to Kalahandi palace was withdrawn sometimes after the S.R.C. movement. I

do not remember if I recommended to the Government for withdrawal of that sentry. * * I cannot deny if it is asserted that it was at my instance the sentry at Kalahandi palace was withdrawn". The evasive way of reply of the witness is eloquent. The respondent, who is the Maharaja of Kalahandi, and who was the Deputy Leader, at the time concerned, of the Opposition in the State Assembly must have been a unique figure in Kalahandi district and no S.P. could possibly forget if at his instance the sentry from the respondent's palace was withdrawn or that the respondent was reported against to the Government as having taken part in the S.R.C. movement which was so notorious an agitation in Orissa. The aforesaid answers of the S.P. are sufficient to justify the assertion on respondent's side that the witness was hostile to the respondent while he was S.P., Kalahandi. The S.P. and the District Magistrate have been examined to support that the wireless messages, Exts. 3 and 23, had been actually received and the Exts. 3 and 23 have been sought to be proved to corroborate P.W. 26. For the internal defects which have been found in Exts. 3 and 23 and for the defects pointed out in the evidence of the S.P. and the District Magistrate, it is really doubtful if Exts. 3 and 23 were actually received as wireless messages, or if they were fabricated at the headquarter. Even if Exts. 3 and 23 were genuine and not fabricated, no statutory presumption applies to them under section 88 of the Evidence Act. It is the original message despatched by P.W. 26 which could corroborate him and no justification has been made out for non-production of the original so as to accept any secondary type of evidence.

26. Now coming to the evidence of P.W. 26, he has said that he had no idea of respondent's holding a meeting at Joypatna before he went there and it is by chance he happened to be at the meeting. He does not remember to have attended any other meeting during the last election and he has further said that no official duty had been imposed on him to attend that meeting and he attended the meeting as a matter of curiosity. As he says "I stayed at the meeting for 5 to 10 minutes and left with the closure of the meeting." Maharani also spoke in the meeting. She spoke for about 3 to 4 minutes. * * I heard Maharaja (respondent) speaking for 3 to 4 minutes. I heard Maharaja saying that people were in difficulty for bamboo and timber and price of rice had gone up. He criticised the Government for exploitation. He asked the people to keep watch in night and if congress workers visited their places, to assault them and turn them away and that he would be responsible for their action. * * * I do not remember if Maharaja referred to different methods of Sosana (exploitation) by the present Government. I do not remember the exact speech of Maharaja and I remember the gist of his speech". According to P.W. 4 Maharaja's speech covered about 2 hours and he has given the same substance of the speech as P.W. 26 has given after he only heard the closing part of the respondent's speech for 3 to 4 minutes. The materials that P.W. 26 gives us during 3 or 4 minutes of the last part of Maharaja's speech could not possibly be delivered by the respondent within such a short span of time to which he refers to. The witness has stated that it took him about 10 minutes to give dictation of what the respondent had said and his typed report to the District Magistrate on that score covered about a page. What he heard in 3 or 4 minutes could not possibly explained the time occupied by him in dictation or the space of his report. At one stage the witness has said "I could understand all the colloquial language that the Maharaja said there" and at another stage he has admitted "it would be difficult for me to understand the colloquial Oriya said by Kalahandi people. Maharaja was addressing people from rural areas and Maharaja was addressing them in Kalahandi language as spoken by Mufasli people". The assertion on the part of this witness in the circumstances that he could understand all the colloquial language that the respondent spoke is a symptom of overzealousness. The witness has said that even after hearing the offensive speech of Maharaja for that short period of 3 to 4 minutes there was no curiosity in his mind to know what offensive matters had been said by the Maharaja during his speech earlier and so he did not take any enquiry about the tenure of Maharaja's speech already made. This can hardly be compatible with the normal conduct of a responsible officer of his position. According to P.W. 4, 400 to 500 persons were present in the meeting and the number of persons as stated, on respondent's side is even less than that estimate; but P.W. 26 has estimated the number of persons present in the meeting at 2000 about and such an exaggeration on his side may not be without significance. in as much as if the crowd was a smaller one, in a Mufasli place everybody's notice would be attracted towards the jeep and the Subdivisional Magistrate who arrived in that jeep near the place of the meeting, whereas if the crowd is a heavier one, his coming to the meeting in a jeep without being marked by others can be well explained. The witness has further said that when he came

to the meeting in his jeep the respondents saw him and though he was on talking terms with the respondent he did not ask him at the closure of the meeting, as to why he was making such offensive speech. Nor did he himself try to tell the people in the meeting that assaulating the congress or Thirani's workers would amount to serious offence and they should not follow the instruction of the speaker to that effect, though he was a Sub-divisional Magistrate. P.W. 26 has said that police officers and C.I.D. officers were present in the meeting and the C.I.D. officers told him that they have noted down the Maharaja's speech and they were forwarding the same. No such police or C.I.D. officers have been sought to be examined on the petitioner's side, nor their reports called for. P.W. 26 has said that soon after his leaving the place of the meeting he came to Joypatna police station (within one furlong distance from the place of the meeting) and he told of the incident of the meeting there to Mr. B. Panda, a Deputy Magistrate who was there in charge of the striking force for the polling that was to take place the next day. This B. Panda, Magistrate, though summoned and present as a witness, was not sought to be examined on the petitioner's side to corroborate the evidence of P.W. 26. According to P.W. 26 he sent a report to the District Magistrate about the speech in the meeting that same day after his arrival to headquarters and the same report has not been called for by the petitioner to be proved in corroboration. The witness has also admitted that his tour diary would disclose about his visit to Joypatna on the date of the occurrence and would have a reference of his activities there and the same had not also been called for to be proved in corroboration. In the so-called wireless message from him contained in Ext. 3, there is reference also to the incident of assault at Depur which is the subject matter of issue No. 5. That part of Ext. 3 recites as follows "it is reported, jeep attacked Ganatantra party and driver assaulted and a sum of Rs. 45 extracted from him. * * *"

"The evidence of this witness regarding this part of the message is "I did not keep the record of the name of the person who told me at Depur about the jeep and extortion of money. I did not know that man and I did not ask his name because I was in a hurry to go and attend different booths. It would have taken me two minutes time to ask his name and get the reply and I could not spare that amount of time. I was conscious of the legal position that if the assault on jeep and its occupants and extortion of money was there it verged on an offence of robbery. I was at Joypatna P.S. for about half an hour. At the time of my presence at Joypatna P.S. the S.I. of police was not there; so I could not report that incident there. Some constable was in charge of the police station. I did not report to the constable in charge because I did not want to be involved in that case. I did not remember if I asked my informant about the place, persons or motive concerned on that assault on jeep and extortion of money. I was persuaded to believe in the information so received. There was *prima facie* nothing to believe or disbelieve in that information." The above quoted statement of the witness betrays the sense of irresponsibility and also recklessness in sending an alarming report to the District Magistrate and it lacks in truth also when the witness who could afford to spend half an hour at Joypatna P.S. could not spare two minutes, time to know something about an alarming case of robbery. Some questions have been put to this witness to shake his credit by injuring his character and in answering some of them the witness has sought to be rather evasive. One of the suggestions made to him was that he had been superseded by his juniors and so he was approaching the congress authorities. His answer is as follows:— "I have not been superseded in service by any junior. I cannot say if some of my juniors in the civil list have become Additional District Magistrates. (Again) Recently 2 or 3 of them have become Additional District Magistrates." Another suggestion made to him was that during the period he was the Executive Officer of the Cuttack Municipality (prior to his incumbency as Sub-divisional Magistrate Bhawanipatna there was some embezzlement in the Municipality with which he was connected in connection of a piece of land near Dhanamali Paria let out to a Kaviraj. The witness says "a land was given to a Kaviraj near Dhamali Paria at Cuttack by the Municipality. I do not remember what was the consideration and whether it was Rs. 25,000. I do not remember if the transfer was complete when I was the Executive Officer; but I remember that the negotiation had been completed before I joined as the Executive Officer. I do not remember whether the transfer was complete after I left as Municipality officer or before I left, though I know that the piece of land was transferred * * I knew the transfer while I was the Executive Officer." There was another suggestion made to him that while he was the Executive Officer of Cuttack Municipality he granted licence for a hotel to one Sagar Mohammad against Revenue Board's order. The witness said in his answer that he did not know

any Sagar Mahammad and if he had a hotel near Choudhuri Bazar post office and if, the Board of Revenue had ordered Sagar Mahammad to vacate the place and he wanted to say that if any licence for hotel was granted by him, it was on the recommendation of the Health Officer. In this connection he says "if there was recommendation of the Health officer, the Executive Officer was bound to accept it and he had no discretion. If there would be any objection against the recommendation of the Health Officer, the Chairman is to enquire and the Executive Officer cannot enquire unless so ordered by the Chairman * * it was the duty of the Health officer to look to the neatness of the hotels; no duty was cast on the Executive Officer to supervise the work of the Health Officer or look to the hotels * * * if there was any breach of condition of licence by hotel keeper he could be prosecuted by the Executive Officer in case there was recommendation of the Health officer." But later on the witness has said "I do accept the proposition that under law the Executive Officer has authority to grant licence, revoke licence and start prosecution without the recommendation and against the recommendation of the Health Officer. The Executive Officer has authority and competency in law to examine the hotels." Another suggestion was made to this witness that on a particular occasion while going to the Teraikei in Kalahandi district he was arranging polling agents for the petitioner. The witness's statement in this connection is "I do not remember to have ever gone to that village at any time during election period. I do not remember if Teraikei village was burnt and I went there to distribute money. I do not remember any case in which I had personally gone to distribute money in any village for it having been burnt. I do not remember if in Kalahandi I had been to see any burnt village." The witness was the Sub-divisional Magistrate of Bhawanipatna for about a year and a half by the time he deposed in Court. Village burnings are not frequent and if as a Sub-divisional Magistrate the witness had gone in a few cases to distribute money to the people in affected locality where villages have been burnt, he could not forget them and all his answers in "do not remember" is a clear symptom of evasion. I regret that for what I have commented on the quality and character of the evidence of P.W. 26, I am not persuaded to put reliance on his testimony irrespective of his status. P.W. 31 is a formal witness. As to P.W. 32, he was the then officer in charge of Joypatna P. S. The respondent's case is that this officer was present in the meeting and also in the police station in the afternoon of 24th February, 1957, whereas according to P.W. 26 this witness was absent from the police station. In the station diary entry No. 279 of the date (Ext. C) had been initially written that the witness returned from Joypatna' was scored through and 'Muffisil' was written in its place without the correction being attested by P.W. 32. The witness has replied that through oversight he had not put his initial at the correction and I find no sufficient material to discredit this witness. Any way his evidence is of negative character and it does not contribute to the petitioner's case.

27. Now I shall deal with the respondent's evidence in respect of this issue. The witnesses for the respondent who directly depose regarding Joypatna meeting, besides the respondent, are R.Ws. 1 and 19. It has been stated by P.W. 26 the Sub-divisional Magistrate that one Ganapati Misra, S.I. police who belonged to Lanjigarh P.S., attended Joypatna meeting and accompanied him to the police station from the place of the meeting and the Sub-divisional Magistrate had a talk with him. R. W. 1 was, though previously the Officer-in-charge of the Lanjigarh P.S. up to the middle of 1956, was at the time of the election the officer in charge of Dharmagarh P.S. and during the period of polls he was on special election duty and by the time of his giving evidence he has retired from service. According to his evidence there was no other Ganapati Misra acting as Police S.I. in Kalahandi district at the relevant time and so P.W. 26 must have referred to this witness to be present in the meeting and also in his company. R.W. 1 has denied the offensive speech attributed to the respondent and he has further denied the presence of P.W. 26 at the meeting or at Joypatna P.S. on the date of the occurrence. This police officer had been sent to be in charge of law and order at the polling booth the next day and so his presence at Joypatna meeting on 24th February 1957 was likely. He has said that he went to the meeting to hear what would be said and also to maintain law and order. The later part of his mission was certainly not correct, though the witness has got an inflated ideas about his all absorbing responsibility as a police officer. He does not remember if he had attended any other election meeting during the election period and cannot give any details about the other meetings. After retirement this witness was selected by the District Recruiting Officer of the congress as a Polling Officer at Talapanafor P.C.C. election and he did act as such in December, 1957 i.e. very shortly before his giving evidence in court. This part of his statement has not been sought to be challenged in cross-examination and

in view of that, whatever other defects have been pointed out above in his evidence I am prepared to believe in his testimony. R.W. 19 is a compounder retired from Government service in 1953 and he is a man of Joypatna. He claims to have attended the meeting of the respondent from the beginning to end and according to him the meeting was attended to by about 200 persons and he denies any offensive speech in the way alleged to have been made by the respondent. It is interesting to note here that while the petitioner's case, as sought to be placed through P.W. 4, was that 400 to 500 persons attended the meeting and as sought to be placed through P.W. 26, was that 2,000 persons attended the meeting, a definite case has been put up to this witness in cross-examination that the meeting was attended to by 700 to 800 persons. Interestedness has been suggested to him in the way that the Zamindar of Joypatna who was the Ganatantra Assembly candidate for that Joypatna area was the President of the Managing Committee of the Joypatna hospital where his son was taking training for vaccination. He has disclaimed his knowledge if Joypatna Zamindar was the President of the Managing Committee of the Joypatna hospital. This hospital being a Government hospital, the President of the Managing Committee has too little scope for showing favour and disfavour and so the suggested interestedness and that indirectly connecting the respondent is too remote. While he has been able to name in his cross-examination the congress worker at Joypatna he claims ignorance of any man of Joypatna or any outsider working at Joypatna as Ganatantra worker, though the respondent has named some workers working in Joypatna area. Joypatna is a village and also is a police station covering the surrounding area around it. So what respondent said about his workers might not necessarily mean that they were working in Joypatna village and if the witness could not name the Ganatantra workers no necessary adverse inference can be drawn against him on that score. The witness has stated that at the time of the election he had no sympathy for either party and after the election he has become a four anna member of the congress. This gets support from the evidence of P.W. 4 who has stated "Ram Chandra Panda of Joypatna (R.W. 19) who belongs to no party and is a respectable gentleman of the locality was there (at the meeting). He has recently been enrolled as a congress member at my instance." In view of his admitted impartiality and in absence of anything that has affected his credibility, I find no reason to discredit this witness. In this connection I touch a little on the evidence of the respondent himself. Though he was put to severe cross-examination for a number of days, little has been brought out from his evidence itself to impeach his credit. He has denied to have made the alleged offensive speech at Joypatna. He was a responsible leader of a party and was the Deputy Leader of the Opposition in the State Assembly besides he is a Law Graduate. Such a man is expected to have been well aware of what are corrupt practices in an election and it is something unusual to expect that in that position he would make an offensive speech in the manner alleged in the open public within half a furlong from the police station when several police officers were present in the meeting and when the Magistrate Mr. Panda, had been deputed with the Striking force, was camping at the police station. It will be something unusual to imagine that even after the arrival of the Sub-divisional Magistrate, P.W. 26, at the scene of the meeting and after the respondent having marked his presence there (the evidence of P.W. 26 is to that effect) he would have continued still in an unqualified offensive and irresponsible speech as has been attributed to him.

28. Apart from the direct evidence adduced on the respondent's side some witnesses have been examined to prove that P.W. 26, the Sub-divisional Magistrate, was partial to the congress party and was arranging polling agents and workers for them and to prove that the warning issued in the night of 24th February, 1957 was the result of some conspiracy. The witnesses are R.Ws. 3, 7, 21 and 23. R.W. 3 has sought to say that he acted as the polling agent of Mr. Thirani at the instance of Mr. Kapur, the Sub-divisional Magistrate. No suggestion to Mr. Kapur has been put to that effect in cross-examination and so the evidence of such a witness needs to be summarily rejected. The witness has said that when he was asked to be a polling agent he agreed because he was to get Rs. 15 which amount he had previously heard was being paid to each polling agent; but he has been constrained to admit later on that he had no knowledge at the time he agreed to be a polling agent as to what the remuneration was and he came to know of it when the amount was actually paid to him. R.W. 7 has stated that he was a contractor under the Revenue Department under the control of Mr. Kapur, P.W. 26; that on 28th February, 1957 the Sub-divisional Magistrate, P.W. 26, was going towards Teraikela village in the petitioner's jeep and he picked up the witness in that jeep from his village. In the jeep the Manager of Mr. Thirani was there, whom the witness did not know and P.W. 26 introduced him to the Manager and asked him to work for the congress. When

they reached at Teraikela the Sub-divisional Magistrate told the Gountia of Teraikela that Mr. Thirani's Manager had come there and that they should try to collect votes for Thirani. On their way back at Kesingha P.W. 26 talked with Parasuram Patnaik, P.W. 23, and Bhagaban Bhoi about the petitioner's election and at Belkudi he so talked with Trinath Singh and he (P.W. 26) asked all of them to act as polling agents of Mr. Thirani and to work for Mr. Thirani. This witness was brought back up to the office of the petitioner at Bhawanipatna headquarters. There he was talking with Mr. Bhandari, the election agent of the petitioner, when the Zamindar of Madanpur-Rampur who was there intervened and told Mr. Bhandari that the witness R.W. 7 was a rogue and a pucca Ganatantra, whereupon the witness left the place and he conveyed the whole incident to the respondent next day. This witness was admittedly a polling agent of the respondent in several places and his worker in the last election and according to his own statement he spent much more than the amount he got from the respondent during election from his own pocket. I may in this connection advert to the evidence of Mr. Kapur, P.W. 26, who has said "I do not remember if he (R.W. 7) went with me and I went to Teraikela on 28th February, 1957. It is not a fact that in my way to Teraikela I arranged polling agents for Mr. Thirani." According to the evidence of R.W. 7 not only he was persuaded by P.W. 26 to work for the congress but three other persons, two at Kesingha and one at Belkhandi were so requested to work for Mr. Thirani on the Sub-divisional Magistrate's way back from Teraikela to Bhawanipatna. The suggestion to the Sub-divisional Magistrate in his cross-examination does not involve the names of the said 3 persons, nor his having arranged any polling agent on way back from Teraikela. Even except suggesting to him if he had taken R.W. 7 in his jeep to Teraikela, it has not been suggested to him that R.W. 7 was persuaded by him to act as a worker for Mr. Thirani. In absence of such positive suggestion the evidence of R.W. 7 should have to be treated as an afterthought. I may further note that the respondent filed a recriminatory petition and he referred there to some corrupt practices committed through officers and in the said petition there was no reference to P.W. 26 making effort to arrange workers for the petitioner. The respondent has said that he was told by R.W. 7 and the other persons requested by Mr. Kapur from time to time to work for Mr. Thirani soon after they were so requested. His explanation for omission of such allegation in recriminatory petition is that though he had advised his lawyer about that point, he could not go thoroughly through the recriminatory petition at the time he signed it to detect the omission. There was no publication admittedly by the Ganatantra party in any press about such conduct of Mr. Kapur during the election. In view of all these circumstances I would say that the evidence sought to be adduced through R.Ws. 3, 7 and 23 is an afterthought. As stated by the respondent R.W. 7 told him that had the petitioner or his election agent paid him some money to work for the congress, he would have played false and appropriated that to his own use. This is the type of man that R.W. 7 is. There are some contradictions on minor points in the statement of R.Ws. 7 and 23 as to what Parasuram said when so requested by Mr. Kapur and I do not attach any importance thereto. As to R.W. 23, he is another old Ganatantra worker. While the respondent's evidence is that this witness had been requested by Mr. Kapur, P.W. 26, on two occasions i.e. on 15th February, 1957 and 28th February, 1957 and that on both the occasions the witness narrated him of the pressure exerted on him by Mr. Kapur, R.W. 23 himself denies about telling the incident of the second occasion to the respondent. Thus I reject the evidence on the respondent's side to the effect that Mr. Kapur, P.W. 26, was in fact attempting to arrange workers for the petitioner during the election. R.W. 21 is the solitary witness for the respondent to prove the alleged official conspiracy behind the warning, Ex. 1. As he says he was at the time of the election making propaganda for the Ganatantra party and was coming to headquarters at occasions. On 24th February 1957 he returned to Bhawanipatna at 9 P.M. The next morning he went out to bazar to take tea and he heard a rumour at the tea stall where some people were talking that the respondent had been warned and that he might be arrested. When he returned from the tea-stall he met two prominent congress workers, Adal Khan and Radha Mohan Behera, and they were workers of petitioner also, standing by the road side. They laughed a taunting laugh at the sight of the witness and told him that warning had been issued to the Maharaja, the respondent. They further told him that the respondent would be arrested. Meanwhile Kashi Babu, the house-hold Controller of the respondent sent for the witness and they talked to each other about the talk of warning to Maharaja and Kashi Babu sent a letter to Maharaja which the witness delivered to Maharaja at an interior place at Muffasil. He told what he had heard from the bazar gossips and congress workers to Maharaja apart from delivering the letter. As I have already said, he is the solitary witness about this episode. While the respondent has stated that he heard from R.W. 21 that the

Subdivisional Magistrate was telling about it to everybody. R.W. 21 has not said to that extent. Though R.W. 21 says that he told the respondent what he had heard from Adal Khan and Radha Mohan, the respondent does not corroborate him in that respect. Though R.W. 21 has said that on 24th February, 1957 he visited no other village except Saleghata and Subselet, R.W. 11 has stated that R.W. 21 visited Depur also that day. R.W. 21 is the owner of a press for which the respondent has stood surety. In view of the interestedness of R.W. 21 and in view of the fact that he is a solitary witness to the whole incident and of the fact that even in some respect he gets no corroboration of the respondent himself, I put no weight on his evidence. So no inference can be drawn from the evidence of this witness that there had been a conspiracy behind the issue of the warning.

29. In summarising my conclusion about the Joypatna meeting I would hold that the direct evidence on the respondent's side is on a better footing than that on the petitioner's side and even ignoring the evidence on the respondent's side, the evidence on the petitioner's side is too shaky to lead to an adverse conclusion against the respondent.

30. The other subsidiary points raised in this issue were (a) if any of the petitioner's workers was actually frightened and his election work hampered as the result of the alleged instigation at the meeting and (b) if in absence of any allegation about the threats having been communicated, it would amount to an undue influence. About the actual effect of the threat there is no evidence except that of P.W. 4 and his evidence is highly unreliable. As about the other point I have already stated my view in issue No. 2 that irrespective of lack of communication, such threat of assault would amount to an undue influence.

Issue No. 8

31. This issue raises the following questions (1) Did the respondent in a public meeting at Bhawanipatna on 5th March 1957 instigated threatening the workers and supporters of the petitioner? (2) Did Angad Ghasi assault Jamal Khan that very day at Ghaspara at Bhawanipatna? (3) Was Angad Ghasi a worker of the respondent and Jamal Khan a supporter of the petitioner. (4) Was the assault due to the instigation of the respondent? As to the meeting at Bhawanipatna I have already discussed the same in Issue No. 1 which refers to the same meeting in another connection and my finding has been that there was no instigation of violence at the Bhawanipatna meeting by the respondent. As to assault by Angad Ghasi on Jamal Khan in the night of 5th March 1957 at Bhawanipatna the only material witness is Jamal Khan, P.W. 44, for the petitioner. P.W. 34 is a formal witness proving only the station diary entry, Exs. 20 and 21, and the F.I.R., Ex. 19. No witness has been examined on the respondent's side. P.W. 44 has stated that in the night he was going to Malipara in Bhawanipatna town in a jeep to appoint polling agent for the petitioner. He had two other companions also besides the driver. At a particular place while he and his two companions leaving the driver behind were going on foot Angad Ghasi cried out to others to come since congress jeep had come. Angad Ghasi caught hold of his two hands. Thereupon his companions and the driver fled away, the latter with the jeep. Before the witness could snatch himself off, Angad gave him 3 to 4 slaps. Immediately he went to the police station and lodged the F.I.R., Ex. 19. The witness cannot say in his cross-examination if Angad had already been acquitted of the criminal case or the case is still pending. Though in his examination-in-chief he referred to 3 to 4 slaps, he has reduced the number to 2 slaps in his cross-examination. In a cycle theft case he was let off on begging apology. He was given to drinking and claims to have recently shaken off that habit. No witness has come to corroborate him about the incident and he does not say a word that Angad was the worker of the respondent. So I hold that no such assault is proved on him and far less that Angad Ghasi was a worker of the respondent.

Issue No. 9

32. This issue refers to an incident at Narla. In para 5 of the particulars to the election petition it is stated that on 3rd March, 57 Pravakar Pujari, polling agent of the respondent, Dasarathi Pujari and Kartika Pujari and other workers and agents of the respondent threatened amongst others Kiran Chandra Singh Dco and Grlja Shankar Patnaik, the workers and electors—supporting the petitioner resulting in a breach of peace. The witnesses on the petitioner's side are P.Ws 27 and 42 and no witness has been examined on the respondent's side. P.W. 42 is a formal witness who proves the station diary entry, Ex. 24, lodged by P.W. 27. It records that while the informant was going in the evening in his jeep on Narla road some Ganatantra workers were going in a procession on the road and some of them threw pebbles over the jeep while the jeep was in motion and the informant

could not identify him. P.W. 27 has stated in his evidence that he was going in a Land-rover when just near Narla police station some people came from the front in a procession and obstructed his vehicle and they were trying "assault the congress people." He was obstructed just for a minute or 2 when some police constables and a A.S.I. came and the crowd dispersed. After going back for a distance of 10 to 15 yards they pelted stones in his direction. The A.S.I. was there whom he asked to make a station diary entry. He did not know who they were; but they were crying slogans asking vote for Ganatantra. It has been admitted by the witness that there was Ganatantra candidate for the Assembly Constituency of that area. He has further said "in villages people supporting one party or other were sometimes having spontaneous procession without having any reference to the candidates." He has further said "sometimes children were moving about giving slogans of one party or the other." The witness has admitted that there was no flag in his vehicle and there was nothing in his vehicle to indicate that it was a congress vehicle. According to him the crowd stood in front of the vehicle for a minute or so. He could not say if any in the crowd knew him or know what he was. He has said that he did not tell the S.I. what was to be noted in the station diary and he simply asked him to note the occurrence as he had seen it. This probably explains the difference between pebbles referred to in the station diary and stones referred to by the witness. This witness was admittedly a worker for the congress and his brother-in-law is an employee in the Paper Mills. Irrespective of that interestedness even if his whole evidence is taken into credit, it makes out no case of undue influence. The members in the procession who were apparently supporters of the Ganatantra party had no knowledge as to the jeep or its occupants and so obviously they did not intend to threaten anybody with the conscious knowledge that the petitioner is interested in those occupants. There is not the least in the evidence of P.W. 27 to prove that those who obstructed the car were workers or agents of the respondent. A point had been raised in this issue as to if undue influence by workers and agents amount to undue influence by the respondent and the undue influence were committed with his consent. This part of the question I have already answered in discussing issue No. 3. Another point that was raised was whether the result of the election materially affected by the alleged incident. There is nothing in the pleadings indicating that the election was materially affected and no evidence has also been adduced that the election was affected in fact.

Issue No. 10

33 This issue refers to assaults on workers and supporters of the petitioner by workers and supporters of the respondent at Joypatna on 14th February, 1957. Dharamgarh on 19th February 1957 and Bhejipadar on 1st March, 1957. The assaults at Dharamgarh and Joypatna were alleged to have been at the instigation of the respondent. Though similar instigations had also been alleged in respect of the assault at Bhejipadar, the same was not brought into issue for reasons stated in Order No. 33, dated 11th December 1957. The instigations of Dharamgarh and Joypatna were said to have been given at those very places in meeting addressed by the respondent on the very date the assaults took place. This issue raised the following questions (1) how far the assaults were actually committed (2) how far the alleged instigations were true (3) were the assailants in any of those cases agents and workers of the respondent (4) were the assaults at Dharamgarh and Joypatna due to the instigations of the respondent and (5) how far the assaults materially affected the result of the election.

34. Coming to the incident at Joypatna it is alleged in para 9 of the particulars to the election petition that Karim Khan, Gobind Barik and Dayanidhi Barik, workers and supporters of the respondent, caused hurt to Mahadeo Panda and Basudeb Nanda to the extent of endangering their lives by pelting stones. The witnesses for the petitioner are P.Ws. 4, 6, 24, 32 and 41 and the witness on the respondent's side is R.W. 20, one of the alleged assailants. P.W. 4 is a search witness to certain brickbats which were found near the road under a tamarind therein Joypatna village at the alleged scene of assault. P.Ws. 6 and 41 claim to be the eye-witnesses to the occurrence. P.W. 6 has stated that in the night of the alleged occurrence Gobinda Barik and 3 other persons (named) threw brickbats against the jeep of the petitioner which was carrying his workers back from propaganda. The jeep stopped as a result thereof and Mahadeo Panda, Balaram Seth and Akura Naik (P.W. 41) as also the driver got down from the jeep. The brickbatters ran away. I have already commented upon the evidence of P.W. 6 in connection with issue Nos. 4 and 5 and have been of the view there that he is an interested and unreliable witness. As about the incident of assault on the jeep, his house was about half a mile away from the place where the stones are alleged to have been pelted. He did not mark if any glass of the jeep was broken or anybody actually injured. According to

him there was no other person nearby at the time. The occupants of the jeep did not ask the witness about the names of the miscreants whom he knew, while they were talking amongst themselves as to who they could be. The alleged occurrence is said to have taken place at 10 P.M. His business, as alleged by him to be there, was to ask for a cart from one Bhaga Gour. He did not proceed further for asking for the cart as he was afraid of the miscreants. The next morning he saw Mahadeo, one of the occupants of the jeep, and he told him the names of the assailants. Though he had found Mahadeo and his companions in the night of the occurrence, Mahadeo did not see him that night; but he cannot explain how he knew that Mahadeo had not seen him in the night of the occurrence. He claims to have good terms with the brick-batters and yet he never asked any of them subsequently about their conduct. If the occupants of the jeep were anxious to know in the night as to who were the assailants and if the witness knew the assailants and knew the anxiety of the occupants to know their names, his silently going away without disclosing their names indicates an unnatural conduct on the part of the witness. His presence at the scene is evidently due to chance. Though in the petition it is stated that Basudeb Nanda was one of the persons injured, the witness does not name him to be an occupant of the jeep and he further does not say that any of the occupants was injured, though the petitioner's definite case in the petition is that hurt was caused to two of the occupants to the extent of endangering their lives. P.W. 41 claims to be one of the occupants of the jeep. He was one of the congress workers. According to him Mahadeo Panda told him the names of the assailants then and there to his query. The witness did not know those names previously and so he asked Mahadeo Panda to repeat their names just with a view to remember those names and Mahadeo Panda repeated their names and it is how he remembers and is still remembering who those assailants were. The credit and the interestedness of this witness has been discussed in issue No. 1. All that I need add here is that the very way in which he expressed his interest to remember the names of the assailants and his remembering them so long is enough to discredit his evidence and his evidence in that respect is contradicted by P.W. 6, according to whom, he told the names of the assailants to Mahadeo Panda the next morning and the occupants of the jeep had not known that night the names of the assailants. Besides while it is the petitioner's case that two of the occupants of the jeep were injured, that is not the evidence of P.W. 41. P.W. 24 is a formal witness who proves the formal F.I.R., but not the report of the first informant attached thereto and P.W. 32 is another formal witness proving that the charge-sheet had been submitted in that case. Neither Mahadeo Panda who lodged the F.I.R. in the case, nor Basudeb Nanda, both of whom have been said in the petition to have been injured, has been examined on the petitioner's side. R.W. 20 has denied his participation in the alleged incident. Though I do not put much weight on the said denial, the evidence on the petitioner's side about the alleged incident is unreliable.

35. Now coming to the incident of assault at Dharmagarh, it is alleged in para 8 of the petition that about 30 young men (some of them have been named) who were agents of the respondent attacked and threw stones at R. P. Hota and D. P. Naik who were workers of the petitioner. The said workers of the petitioner are P.Ws. 40 and 37 respectively. Except them no other witness has been examined on the side of the petitioner. One Hari Shankar Naik, who has been alleged as one of the assailants, has been examined at R.W. 8. In issue No. 7 I have discussed about the unreliable and interested character of the evidence of P.W. 37 and in issue Nos. 4 and 5 I have similarly dealt with the interested and unreliable character of the evidence of P.W. 40. Both the witnesses are employees of the Paper Mills working for the petitioner. According to P.W. 40 the assailants came near his jeep but not in front of it and threw dust into the jeep. The jeep was on motion; but when they threw dust the jeep was stopped just to enquire what the matter was. The assailants thereupon cried slogans. Meanwhile a constable came near and he told him about the conduct of the assailants. While he was leaving with his jeep the hood of the jeep was pulled up by somebody of the crowd which he pointed out to the constable. According to the evidence of P.W. 37 it is the assailants who stopped the jeep from the front of it and this does not agree with the version of P.W. 40, according to whom the jeep was stopped by him and the assailants were not in front of the jeep. As to reporting the matter to the constable, unlike the story of P.W. 40, P.W. 37 has said that P.W. 40 went to the police station in front of which the incident occurred to report to the police. The police officer, who was said to have been present there, has not been called as a witness nor has the station diary entry, which is said to have been lodged, has been proved. The most interesting feature in respect of this allegation is that while petitioner's allegation in the petition is that stones were thrown, the witnesses have deposed that dust was thrown. In view of what I have observed I do not believe the story on the petitioner's side. R.W. 8 has

denied the incident. I have not relied on his evidence while discussing issue No. 7, since he has denied himself to be a worker of the respondent, though the respondent has admitted that he was his worker. I do not put any weight on his denial evidence.

36. The next incident is the assault at Bhejipadar on 1st March, 1957. The allegation in para 9 of the petition is that Ranjit Dandasena and some others (named) who were agents and workers of the respondent man-handled Ram Abtar Agarwala and Jogendra Panda, the petitioner's workers. Jogendra Panda is P.W. 14 and Ram Abtar Agarwala is P.W. 43. Of the alleged assailants Ranjit Dandasena is R.W. 17. P.Ws. 24 and 30 are two formal witnesses, the former being a Magistrate in whose court the connected criminal case is now sub judice and the latter is a police officer who submitted charge-sheet in that criminal case. Ex. B is the F.I.R. lodged by P.Ws. 14 and 43. P.W. 14 has stated that since 2nd March, 1957 was the date of the poll, on 1st March 1957 P.W. 43 and some others with one Dola Seth were going in a jeep and Dola Seth was being taken by them to be put at Bhejipadar to work as petitioner's election agent. They left Dola Seth who was to walk on to Bhejipadar and they proceeded in the jeep towards Kallakundal. They again returned to Bhejipadar to make over the articles of Dola Seth which were in the jeep. Ranjit Dandasena and some other persons (not named) were found sitting at the Gountia's place and the witness asked them if they had seen Dola Seth. Ranjit Dandasena thereupon said that they knew no Dola Seth and asked the witness and his party to go away. He and his party was waiting a little when Ranjit Dandasena and others with him told them that they should go away or they should see. P.W. 43 meanwhile wanted some water to drink, whereupon R.W. 17 told him that they were agents of the Marwari and there was no water for them. The party then turned their car back. By that time many people had assembled near the car. R.W. 17 instigated to kill those "Salas". Thereupon the crowd pelted brickbats. Members of the witness's party got injured by such pelting. There was some police in the local school whom the party approached and the police told them that they could do nothing and advised them to report the matter at Junagarh P.S. At Junagarh they were sent by the police for medical examination over their injuries. In his cross-examination the witness admits that when they went back to Bhejipadar and the incident of assault took place Dola Seth was not there nearby them and he was not brought back in their jeep when they came to Junagarh P.S. The F.I.R. Ex. B, shows that Dola Seth was there with the witness when the incident took place and that he came back with the party to the police station at Junagarh. While the witness says that Dola Seth acted as the polling agent of the petitioner at Bhejipadar, the F.I.R. states that somebody else acted as the polling agent. The story of the witness that his friend P.W. 43 asked R.W. 17 for water for drinking after they had been threatened to go away seems to be inherently unusual. P.W. 43 reports a similar story as P.W. 14. He claims to have got two hits of stones, one on his right arm shoulder and the other on the right thigh. The manner in which he was sitting in the jeep makes it rather unusual that he could have got a hit on his right thigh. He also says that Dola Seth was not near the scene of the incident and he was not brought back in the jeep and he cannot explain how such statement was made in the F.I.R. to which he was also a signatory. The injury certificates alleged to have been obtained after medical examination have not been called and the police officers whom the witness claimed to have met at the school have not also been sought to be examined in corroboration. Both the witnesses were admittedly workers of the congress party. In view of their interestedness and in view of the incongruity of the story that they have given with that in the F.I.R. I am not persuaded to put any reliance on these witnesses. R.W. 17 has denied the alleged incident. His case is that 10 or 15 days prior to voting P.Ws. 14 and 43 requested him to work as a worker for the petitioner which he declined, whereupon they promised retaliation saying that he had not obeyed their demand. No such story have been put to P.Ws. 14 and 43 in their cross-examination and so I treat it to be an afterthought. R.W. 17 is admittedly the polling agent of the respondent. In the circumstances I put little weight in the story of denial of the incident given by him; but that does not matter since the petitioner has not been able to prove his own case.

37. As to the instigation of assault by the petitioner in meetings at Dharma-garh and Joypatna I have discussed in issue No. 7 about the truth of the allegations and I have held that there were no such instigations at those places.

38. As to who of the alleged assailants were respondent's agents and workers, it is admitted that Ranjit Dandasena at Bhejipadar was the polling agent of the respondent and the witnesses concerned about Bhejipadar incident do not

name any of the other persons named in the petition to be respondent's workers. As to Dharmagarh it has been admitted by the respondent, though denied by R.W. 8, that R.W. 8 was a worker of the respondent. None of the other persons named in the petition to be respondent's workers in the alleged assault has been established to be respondent's workers or agents. As to the alleged assaults at Joypatna, there is no evidence that the persons named in the petition as assailants were the workers or agents of the respondent. As to the point how far the assaults materially affected the result of the election, there is no evidence whatsoever on that score.

39. In the ultimate analysis I hold that the petitioner has failed to substantiate any of the allegations against the respondent and so I dismiss the election petition. Apart from the fact that the respondent examined a number of witnesses, the hearing of the petition covered about two months. So I direct the petitioner to pay to the respondent Rs. 2,500 to wards all costs of the proceeding, over and above the sum of Rs. 250 which has been adjudged as cost in respondent's favour against the petitioner on the latter's withdrawing his prayer to be declared elected (*vide* Order No. 59, dated 10th January, 1958). Interest on cost is allowed at 3 p.c. p.a. from to-day.

G. K. MISRA, Member,
Election Tribunal.

The 28th February, 1958.

Dictated and corrected by me.

G. K. MISRA, Member,
Election Tribunal.

The 28th February, 1958.

[No. 82/471/57/4241.]

By order,
DIN DAYAL, Under Secy.